

# COPYRIGHT LAW AND THE CHURCH

by Susan Walker

August 19, 1995

Covenant MCC

## SOURCES:

- ✓ Christian Copyright Licensing International, License Manual, October 1, 1994-September 30, 1995. (CCLI)

The Church Guide to Copyright Law, 2nd edition, Richard R. Hammar, J.D., LL.M., CPA, published by Christian Ministry Resources, © 1990.

"Copyright Basics - Circular 1", Library of Congress Copyright Office, Washington, D.C., published by U.S. Government, March 1992. (Public Domain)

Library of Congress Copyright Office per America On-Line/Education/Library of Congress On-Line/Multimedia Connections/Touring the Library-The Copyright Office, August 17, 1995.

## OUTLINE:

### I. Introduction

#### A. Why important?

1. Christian faithfulness to God

2. Christian faithfulness to our neighbors

#### B. How to approach the subject

1. To become intellectually informed

2. To develop appropriate attitudes / to become emotionally supportive

3. To be personally and collectively responsible

### II. COPYRIGHT BASICS

#### A. Overview

| <sup>1</sup><br>work<br>creation | <sup>2</sup><br>tangible<br>form                                       | <sup>3</sup><br>"Publication"<br>Notice requirement | <sup>4</sup><br>Registration<br>(optional)                     | <sup>5</sup><br>Transfers of CR                                                                                 |
|----------------------------------|------------------------------------------------------------------------|-----------------------------------------------------|----------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| idea                             | written<br>audio recording<br>visual recording<br>Copyright protection | "distribution of<br>the work to the<br>public..."   | within 0-3<br>months is<br>best though<br>not required<br># 20 | assignment of rights:<br>publishing contracts<br>exclusive vs.<br>non exclusive<br>agreements<br>CCLI Agreement |

Use out next Sunday



## B. Background info

1. PURPOSE: Federal Law: Article I, Section 8, of the U.S. Constitution gives Congress the authority *"to promote the progress of...the useful arts, by securing for limited times to authors...the exclusive right to their respective writings."* Based on this, Congress has enacted a number of copyright laws: 1909, 1976, 1989.

"The economic philosophy behind the clause empowering Congress to grant...copyrights is the conviction that encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors...in the useful arts. Sacrificial days devoted to such creative activities deserve rewards, commensurate with the services rendered."

Mazer v. Stein, 347 U.S. 201 (1954) (Hammer, p.2)

2. DEFINITIONS - refer to chart on page 1, this outline

Step One - Work, Creation, Idea: TX (text), PA (performing art), SR (sound recording), VA (visual arts), SE (serial works). see Circular 1, page 3, 10.

Step Two - Tangible Form: written down, video and/or audio-taped. *Copyright protection begins here.*

Step Three - "Publication": This is important and The Copyright Act defines it as follows: "Publication is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease or lending..." see Circular 1, page 3 - 4.

"Notice of Copyright" is required of works published before March 1989, BUT IS NOT REQUIRED (though strongly recommended) of works published after March 1, 1989. "Notice" is clearly visible on a work and includes all three elements: symbol, year, copyright owner's name. see Circular 1, page 4 - 5.

Duration of Copyright is very important to determine. When the "limited time" expires, a work becomes PUBLIC DOMAIN and may be used freely. However, determining if a work is in fact public domain is often very tricky. see Circular 1, p. 6. Refer to Hammer's, "How to Check on the CR Status of a Particular Work", p.44-46.

Step Four - "Copyright Registration": Strongly recommended, though not required. This is a legal formality which makes a public record of the owner's copyright claim with the Library of Congress. There are many legal advantages to this for the CR owner. Also, one can record the transfer of (exclusive or non-exclusive) copyrights to another party. These entries are recorded in the Library of Congress' published work, Catalog of Copyright Entries, or CCE (which should be available at the downtown public library). see Circular 1, p. 7 - 11.

Step Five - Transfers of Copyrights. Any or all of an owner's copyrights may be transferred temporarily or for the Duration of the CR term to another party. Copyright Act of 1976, section 106, states that the transfer of *exclusive rights* belonging to the CR owner requires a written agreement signed by the CR owner. Thus, transfers are normally made by written contracts, though Circular 1 clarifies that "transfer of a right on a *nonexclusive* basis does not require a written agreement. "Blanket Licenses" such as the CCLI agreement and the MCC Hymnal Project are *nonexclusive transfers of certain copyrights* (NOT, ALL COPYRIGHTS).







## DEFINITIONS (continued)

"Copyright" - Legal protection providing a "bundle of rights" to the owner of an intellectual / artistic work. Section 106 provides *FIVE EXCLUSIVE RIGHTS*:

1. to reproduce
2. to make derivative works
3. to distribute copies or phonorecords
4. to perform the work publicly
5. to display the work publicly

*MERE OWNERSHIP OF A BOOK, MANUSCRIPT, PAINTING, OR ANY OTHER COPY OR PHONORECORD DOES NOT GIVE THE POSSESSOR THE COPYRIGHT. THE LAW PROVIDES THAT TRANSFER OF OWNERSHIP OF ANY MATERIAL OBJECT THAT EMBODIES A PROTECTED WORK DOES NOT OF ITSELF CONVEY ANY RIGHTS IN THE COPYRIGHT.* see Circular 1, page 2.

### III. ISSUES OF PARTICULAR INTEREST IN CHURCH MATTERS

#### A. Hammer Introduction, ix - xi, The Church Guide to Copyright Law

#### B. Effect of Copyright Infringement

C. Common Church Infringements - chorus booklets, choir anthem reproductions, musical score reproduction for an accompanist, Bible quotations, service recording, consumable educational worksheets, musical arrangements of a copyrighted work, musical performances in a non-worship service setting, screening videos rented under a "home-use" agreement, video-taping services, use of copyrighted poems, prayers, litanies, use of copyrighted artwork on banners, bulletins, newsletters, computer software, creation of rehearsal tapes for choirs, use of overhead transparencies, reproducing copyrighted music (lyrics or melody) in church bulletins and inserts, etc.

#### D. Infringement Penalties

1. Injunctions: Court order to do or not to do something
2. Impounding Items
3. Actual Damages and Profits
4. Statutory damages : between \$500 and \$20,000 or \$100,000 if "willfully"
5. Costs and Attorneys' Fees
- (6. Criminal Offenses: criminal conviction and imprisonment)



#### E. DEFENSES TO COPYRIGHT INFRINGEMENT

1. "Fair Use" - Four Factors, see Hammer, p. 78 - 81

- a. Purpose & Character -
- b. Nature of CR work -
- c. Amount & Substantiality of the portion used -
- d. Effect upon the potential market value of the CR work

2. "Agreement on guidelines for Classroom Copying in Not-For-Profit Educational Institutions..." see Hammer, p. 85 - 94

"Brevity, spontaneity and Cumulative Effect" cited

Unfortunately, it has not been tried in Court as to whether the educational efforts of a church could be protected under this Agreement. Nothing is definite as to whether church Sunday School and workshops would be protected though the author, Hammer, believes a good case could be made for protection under this Agreement. Note there are definite guidelines on what is permissible.

3. Libraries & Archives have special copying privileges. Hammer, p. 94 - 97.

4. Face-to-Face Teaching Activities at an educational institution. Hammer, p. 99 - 101

5. The Religious Services Exemption , Hammer, p. 101 - 104

6. The Nonprofit Performance Exemption, Hammer, p. 104 - 105

7. Authorization from the Copyright Owner, p. 116 - 120: Letter or a License





## Introduction to First Edition

Copyright law is of special significance to churches for two reasons. First, few areas of law affect churches more pervasively than copyright law. Copying of choral music or church school literature, insertion of hymn lyrics in church bulletins, compilation of "chorus booklets" for insertion in hymnal racks, use of overhead projectors and transparencies in religious services and in teaching, making audio and video tapes of church services, copying computer programs for use by multiple members of the church staff, the broadcast (over radio or television) of religious services, use of copyrighted translations of the Bible, performance of copyrighted music in the course of religious services, and the use of videotapes in church youth meetings--these are but some church activities that are directly affected by copyright law.

Second, copyright law involves the application of special rules that are not clearly understood by church staff members, church leaders, musicians, and even some publishers and attorneys. As a result, there is considerable confusion regarding the application of copyright law to churches. This confusion has contributed to widespread misinformation and noncompliance with the law. Such noncompliance, even if unintentional, can result in disastrous consequences. To cite just one example, consider a church that enjoys singing contemporary choruses that are not in its hymnal or in any available publication. The choir director assembles a compilation consisting of typed lyrics to 50 choruses (40 of which are copyrighted) commonly sung by the congregation, makes 100 copies of the compilation, and inserts the copies in the hymnal racks in the sanctuary. This simple and seemingly innocent activity could result in minimum damages to the church of \$1,000,000 under section 504 of the Copyright Act, and could be considerably higher. The point is clear--churches and church leaders cannot afford to be ignorant of their obligations under copyright law.

This book was written to provide churches, church leaders, clergy, choir directors, musicians, publishers, and attorneys, with a nontechnical explanation of those provisions of the copyright

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## *Introduction*

law of greatest significance to churches. Until now, no serious attempt has been made to provide this essential information to churches. This unfortunate fact has contributed significantly to the confusion and misinformation that now exists, and to the staggering amounts of potential damages that many churches have incurred due to their unfamiliarity with the principles discussed in this book.

Let me make one point very emphatically--churches cannot afford to persist in acts of copyright infringement merely because they know of "several other churches that are doing it." It is time for church leaders to apprise themselves of their obligations under copyright law, and to act responsibly. Many church leaders, when they are apprised of the relevant provisions of the copyright law, will no doubt disagree vigorously with some of those provisions. They will not be the first persons to criticize the law. Several provisions of the copyright law are in fact controversial and have been denounced by copyright authorities. However, disagreement with a provision of the law is no justification for violating that provision. Church leaders who disagree with some of the rules discussed in this book should work to change those rules through legal channels. Expressing opposition to the law through willful violation can have disastrous consequences, since the damages for copyright infringement can increase substantially in cases of willful violation. In the past, churches were treated with much greater deference. They were sued very seldom. Today, however, the reality is that churches are often the target of lawsuits. This reality makes it imperative that churches and their representatives understand their legal obligations.

The purpose of this book is not to justify copyright law or defend the position of publishers, authors, churches, or users of copyrighted material. Rather, it is to explain the pertinent issues of copyright law in a fair and objective manner. It is said that Mark Twain once remarked that "only one thing is impossible for God--to find any sense in any copyright law on this planet." It is my objective to "make sense" of those provisions of copyright law of greatest significance to churches and their representatives. All of the obvious issues are covered (e.g., copying, transparencies, recording services, broadcasts), but in addition, a variety of other issues are covered that are just as important though less often considered by churches and their representatives (e.g., copying of computer programs, works made for hire, use of videotapes during church activities). In addition, much basic information regarding copyright law is covered in





order to assist clergy, church musicians, and others in protecting their creative works. Also, this background information is necessary to fully understand and appreciate the special rules that apply to churches.

Let me make another point very clearly. It is not my objective to express my views on how I think the copyright law should be written. While such a work might be interesting, it would be of no practical relevance. I do not have the time to write such a book, and I doubt that you would have the time or inclination to read it.

Neither is it the intent of this book to dictate to churches any particular course of conduct. Rather, the purpose is to educate; to apprise church leaders of the meaning of relevant provisions of the law and the application of those provisions to churches. Church leaders are then free to make informed judgments regarding their own response to the issues addressed. On controversial issues, I have attempted to present both sides, and then present my unbiased view on how I believe the courts would rule.

✓ One final note. This book describes the impact of the current copyright law (the Copyright Act of 1976) upon churches, writers and composers of religious works, and religious publishers. It is not my intent to discuss the continuing impact of the previous copyright law (the Copyright Act of 1909). ✓ Nevertheless, the 1909 law continues to exert a limited influence, and at times it is essential to be aware of its provisions. I chose not to address the continuing impact of the 1909 law because its impact is rather limited, and because it would have expanded considerably the size of this book and resulted in greater confusion. This is one reason why it is important that readers having specific copyright law questions consult with an attorney having experience in the area of copyright law.

Copyright law, like many areas of law, is in a constant state of development. Accordingly, this book will be updated as necessary to reflect significant changes and developments. Your suggestions for clarification or improvement in the text are invited.

Richard R. Hammar, J.D., LL.M., CPA  
Springfield, Missouri  
September 1988





### **3.3 How to Check on the Copyright Status of a Particular Work**

Let's assume that your church would like to duplicate a particular religious song for use by the choir. You realize that such duplication will amount to an infringement of the copyright in the work if the copyright has not expired. But if the copyright has expired, then the work is in the public domain and ordinarily can be duplicated at will. How do you know whether or not the copyright has expired? There are several ways to investigate whether a work is under copyright protection. The main ones are listed below.

examine the  
work itself

(1) *Examine a copy of the work for such elements as a copyright notice, place and date of publication, author and publisher.* For example, the omission of a valid copyright notice from any published copy of a work first published before 1978 generally indicates that the work is not protected by copyright. However, there are a number of exceptions to this rule. The date in the copyright notice is also helpful in determining the copyright status of a work. Generally, the copyright in any work published or copyrighted more than 75 years ago (75 years from January 1st of the present year) has expired by operation of law and the work has permanently fallen into the public domain. For example, on January 1, 1990, copyright in most works published or copyrighted before January 1, 1915 will have expired. The copyright notice (or any other information presented in the work) usually gives enough information about the publisher that you will be able to contact that person or organization to obtain information about the copyright in the work. However, note that in examining a copy, it is important to determine whether that particular version of the work is an original edition of the work or a "new version." New versions include musical arrangements, adaptations, revised or newly edited versions, translations, abridgements, compilations, and works republished with new matter added. The law provides that such "derivative works" are independently copyrightable and that the copyright in such a work does not affect or extend the protection, if any, in the underlying work.





**Example.** Bruce knows that the copyright in a particular book expired in 1987. He therefore copies significant passages from the book in a book of his own. However, Bruce was not aware that while the copyright in the original edition of the copied book expired in 1987, the author published a second edition of the work in 1960 (the copyright in which extends until the year 2035). Therefore, if the materials used by Bruce appeared in the second edition as well as in the original edition, Bruce is guilty of copyright infringement.

search  
Copyright  
Office records  
yourself

(2) *Make a search of the Copyright Office catalogs and other records.* The Copyright Office publishes the *Catalog of Copyright Entries* (CCE) which is divided into parts (i.e., literary works, performing arts, sound recordings, renewals) according to the classes of works registered. Since 1979, the CCE has been issued in microfiche form only (previously, each part of the Catalog was issued at regular intervals in book form). Each CCE segment covers all registrations made during a particular period of time. A number of libraries throughout the United States maintain copies of the Catalog, and this may provide a good starting point if you wish to make a search yourself. However, there are some cases in which a search of the Catalog alone will not be sufficient to provide the needed information. If you are near Washington, D.C., you may wish to search Copyright Office records in the Library of Congress. It is open to the public, and you can search free of charge.

have the  
Copyright Office  
perform a  
search

(3) *Have the Copyright Office make the search for you.* Upon request, the Copyright Office staff will search its records at the rate of \$10 for each hour or fraction of an hour consumed. The Copyright Office will send you a typewritten report or, if you prefer, an oral report by telephone. Your request, and any other correspondence, should be addressed to

Reference and Bibliography Section, LM-451  
Copyright Office  
Library of Congress  
Washington, D.C. 20559

The more detailed information you can furnish with your request, the less time-consuming and expensive the search will be. You should try to provide as much of the following information as possible: (1) the title of the work, and any possible variations; (2) the name of the author; (3) the name of the probable



copyright owner (which may be the publisher); (4) the approximate year when the work was published or registered; (5) the type of work involved (book, song, sound recording, etc.). Unless your request specifies otherwise, Copyright Office searches include records pertaining to registrations, renewals, and assignments. The Copyright Office has developed a form that persons can use to submit a search request. This form is available without charge from the Copyright Office.

Searches of Copyright Office catalogs and records are useful in helping to determine the copyright status of a work, but they cannot be regarded as conclusive in all cases. The complete absence of information about a work in the office records does not mean that the work is unprotected. For example, works published on or after January 1, 1978 need never be registered to ensure copyright protection. Many authors and composers do not register their works, and accordingly no amount of searching Copyright Office materials will disclose the existence of such a work, though it in fact enjoys copyright protection.

**Church Music  
Publishers  
Association**

(4) *Contact the Church Music Publishers Association, P.O. Box 158992, Nashville, TN 37215, for assistance with respect to musical works.* This organization maintains information on the copyright status of several musical compositions.

*Endnotes*

1 U.S. Constitution, Article I, Section 8.

2 *United Christian Scientists v. Christian Science Board of Directors*, First Church of Christ, Scientist, 829 F.2d 1152 (D.C. Cir. 1987). This special legislation was the first copyright law to be invalidated by the courts.

3 Copyright Act section 302.

4 Copyright Act section 302(e).





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3 Copyright Act section 302.

4 Copyright Act section 302(e).

## Goals-

1. Resources
2. attitudes
3. comfort level - 1st steps
4. all beginners
5. "Respect"
6. Team spirit.

CCCL



## 6.5 The Religious Services Exemption

#.5  
As far as churches are concerned, section 110(3) ranks as one of the most important provisions in the entire Copyright Act. It provides that "performance of a nondramatic musical work or of a dramatico-musical work of a religious nature, or display of a work, in the course of services at a place of worship or other religious assembly" shall not constitute infringement of copyright. The exemption applies to "dramatico-musical" works of a "religious nature." This language is intended to exempt certain performances of sacred music that might be regarded as "dramatic" in nature, such as oratorios, cantatas, and choral services. However, the exemption is not intended to cover performances of secular operas, plays, or motion pictures, even if they have an underlying religious or philosophical theme and take place in the course of religious services.

To be exempted under section 110(3), a performance or display must be "in the course of services." This excludes activities at a place of worship that are for social, educational, fund raising, or entertainment purposes.

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*during a morning worship service at First Church. Since this constitutes a performance of the song, and since the copyright owner alone has the exclusive right to publicly perform a copyrighted work, Rachel's performance would constitute an infringement of copyright except for the exemption provided by section 110(3). Section 110(3) specifically provides that the performance of a musical work of a religious nature in the course of services at a place of worship or other religious assembly is exempt from copyright infringement. Therefore, there neither Rachel nor the church has violated the copyright law.*

**Example.** *Same facts as the preceding example, except that the church broadcasts its morning worship services over a local radio station. The exemption provided by section 110(3) protects the live performance of the work in the course of the church service, but it does not extend to the radio transmission. The church should check with the radio station to be sure that it has a license that protects the transmission of the copyrighted music.*



performances  
and displays

The exemption includes both performances of musical or dramatic works of a religious nature, or the display of a work, in the course of services at a place of worship or religious assembly. Copying of material is not exempted under this provision, since copying under no circumstance can be characterized as either a performance or a display. Further, all displays are covered by the exemption, regardless of the nature of the work being displayed. However, the definition of "display" does not extend to the sequential showing of motion pictures and other audiovisual works.

Since the performance or display must occur "at a place of worship or other religious assembly," the exemption would not extend to religious broadcasts or other transmissions to the public at large, even where the transmissions were sent from the place of worship. On the other hand, as long as services are being conducted before a religious gathering, the exemption would apply if they were conducted in places such as an auditorium or outdoor theatre.

**Example.** *Rachel sings a copyrighted sacred song as a solo during a morning worship service at First Church. Since this constitutes a performance of the song, and since the copyright owner alone has the exclusive right to publicly perform a copyrighted work, Rachel's performance would constitute an infringement of copyright except for the exemption provided by section 110(3). Section 110(3) specifically provides that the performance of a musical work of a religious nature in the course of services at a place of worship or other religious assembly is exempt from copyright infringement. Therefore, there neither Rachel nor the church has violated the copyright law.*

**Example.** *Same facts as the preceding example, except that the church broadcasts its morning worship services over a local radio station. The exemption provided by section 110(3) protects the live performance of the work in the course of the church service, but it does not extend to the radio transmission. The church should check with the radio station to be sure that it has a license that protects the transmission of the copyrighted music.*





**Example.** Same facts as the two preceding examples, except that the church also prepares audio cassettes of its services for distribution to persons who were not able to attend the service. The exemption provided by section 110(3) does not extend to the making of audio tapes of the services in which copyrighted musical works were performed. The distribution of such tapes is governed by the compulsory license section of the copyright law (discussed later in this chapter).

**Example.** First Church hosts a performance of the local symphony orchestra. The works performed during the concert include two copyrighted contemporary musical works of a secular nature. The performance of these works is not protected from copyright infringement by section 110(3), although they may be protected under section 110(4), which is discussed later in this chapter.

**Example.** The music director at First Church makes copies of copyrighted music for the members of her choir. This practice is not excused by section 110(3), since it does not constitute either a performance or a display.

**Example.** The music director at First Church makes an unauthorized transparency of a copyrighted song and displays it on a screen during worship services. The making of the transparency is an infringement of copyright that is not protected by section 110(3), since it does not constitute a performance or a display.

**Example.** The youth minister at First Church rents a video of a religious movie for use in an evening youth service. The showing of the video to the church youth group is an infringement of copyright if it were rented out only for private home viewing. Such an infringement is not excused by section 110(3) since it does not constitute either a performance or a display.





## *The Church Guide to Copyright Law*

**Example.** *During an overnight activity at First Church, a youth group watches a few programs on a television set brought by adult sponsor. While the exemption available under section 110(3) will not apply, this activity is excused from infringement by section 110(5) of the Copyright Act which exempts the mere reception in public of an ordinary radio or television receiving device of a kind commonly sold to members of the public for private use. This exemption assumes that the audience is not charged a fee to see the transmission.*

**publishers'  
interpretation  
of section 110(3)**

Appendix 1 summarizes the copyright policies of several large publishers of religious music. Note for example that none of the publishers surveyed interprets section 110(3) to permit the unauthorized fabrication of transparencies or slides, the unauthorized duplication of copyrighted music for use in choir rehearsals or during congregational singing, or the unauthorized recording of worship services in which copyrighted musical works are performed.





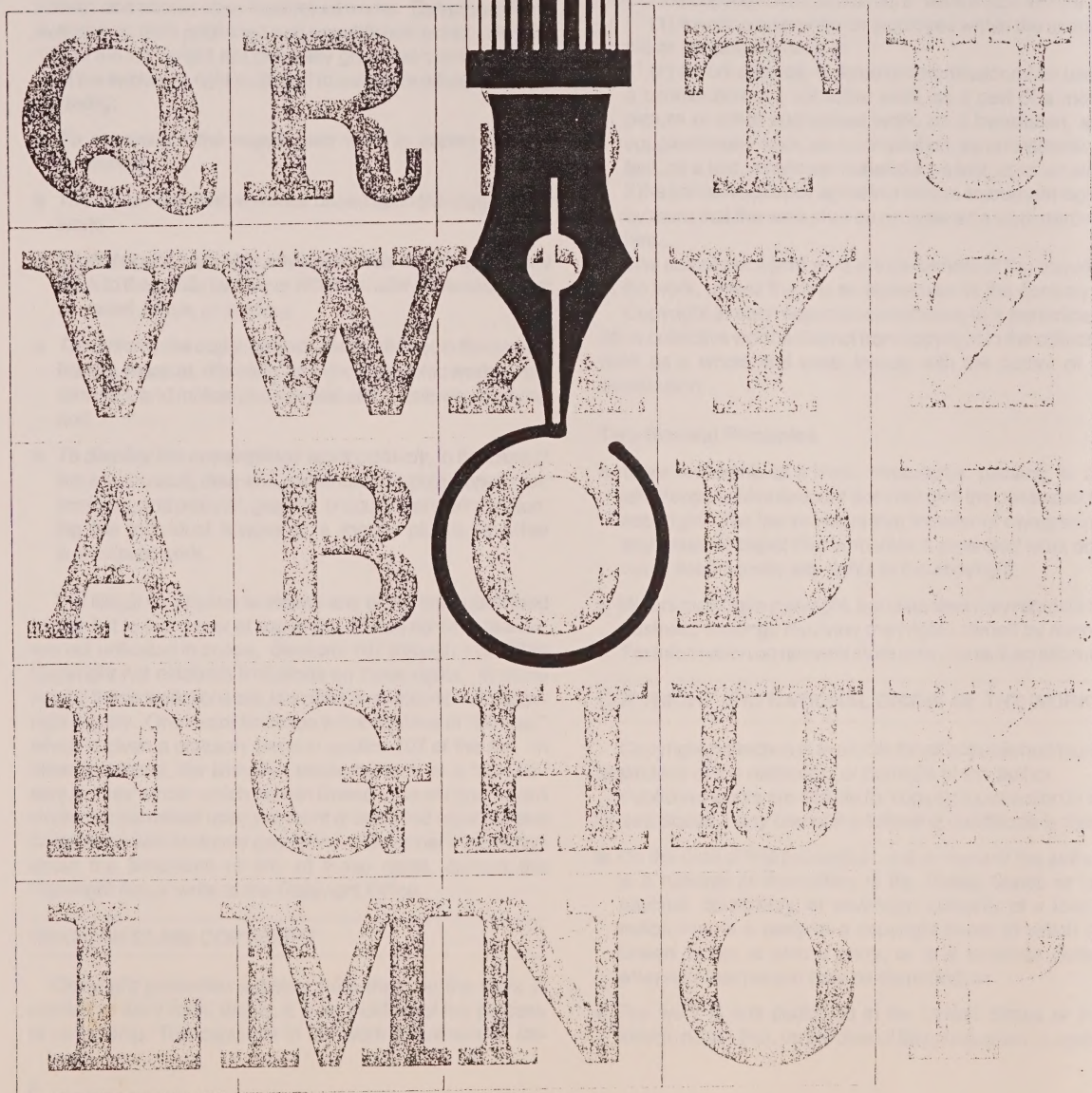
Circular

# 1

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Copyright  
Basics

published  
1992







# Copyright Basics

## WHAT COPYRIGHT IS

Copyright is a form of protection provided by the laws of the United States (title 17, U.S. Code) to the authors of "original works of authorship" including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works. Section 106 of the Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

- **To reproduce** the copyrighted work in copies or phonorecords;
- To prepare **derivative works** based upon the copyrighted work;
- **To distribute copies or phonorecords** of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- **To perform the copyrighted work publicly**, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works; and
- **To display the copyrighted work publicly**, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work.

It is illegal for anyone to violate any of the rights provided by the Act to the owner of copyright. These rights, however, are not unlimited in scope. Sections 107 through 119 of the Copyright Act establish limitations on these rights. In some cases, these limitations are specified exemptions from copyright liability. One major limitation is the doctrine of "fair use," which is given a statutory basis in section 107 of the Act. In other instances, the limitation takes the form of a "compulsory license" under which certain limited uses of copyrighted works are permitted upon payment of specified royalties and compliance with statutory conditions. For further information about the limitations of any of these rights, consult the Copyright Act or write to the Copyright Office.

## WHO CAN CLAIM COPYRIGHT

Copyright protection subsists from the time the work is created in fixed form; that is, it is an incident of the process of authorship. The copyright in the work of authorship *im-*

*mediately* becomes the property of the author who creates it. Only the author or those deriving their rights through the author can rightfully claim copyright.

In the case of works made for hire, the employer and not the employee is presumptively considered the author. Section 101 of the copyright statute defines a "work made for hire" as

- (1) a work prepared by an employee within the scope of his or her employment; or
- (2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as supplementary work, as a compilation, as an instruction text, as a test, as answer material for a test, or as an atlas if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire....

The authors of a joint work are co-owners of the copyright in the work, unless there is an agreement to the contrary.

Copyright in each separate contribution to a periodical or other collective work is distinct from copyright in the collective work as a whole and vests initially with the author of the contribution.

## Two General Principles

- Mere ownership of a book, manuscript, painting, or any other copy or phonorecord does not give the possessor the copyright. The law provides that transfer of ownership of any material object that embodies a protected work does not of itself convey any rights in the copyright.
- Minors may claim copyright, but state laws may regulate their business dealings involving copyrights owned by minors. For information on relevant state laws, consult an attorney.

## COPYRIGHT AND NATIONAL ORIGIN OF THE WORK

Copyright protection is available for all unpublished works regardless of the nationality or domicile of the author.

Published works are eligible for copyright protection in the United States if *any* one of the following conditions is met:

- On the date of first publication, one or more of the authors is a national or domiciliary of the United States or is a national, domiciliary, or sovereign authority of a foreign nation that is a party to a copyright treaty to which the United States is also a party, or is a stateless person wherever that person may be domiciled; or
- The work is first published in the United States or in a foreign nation that, on the date of first publication, is a party





to the Universal Copyright Convention; or the work comes within the scope of a Presidential proclamation; or

- The work is first published on or after March 1, 1989, in a foreign nation that on the date of first publication, is a party to the Berne Convention; or, if the work is *not* first published in a country party to the Berne Convention, it is published (on or after March 1, 1989) within 30 days of first publication in a country that is party to the Berne Convention; or the work, first published on or after March 1, 1989, is a pictorial, graphic, or sculptural work that is incorporated in a permanent structure located in the United States; or, if the work, first published on or after March 1, 1989, is a published audiovisual work, all the authors are legal entities with headquarters in the United States.

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## WHAT WORKS ARE PROTECTED

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Copyright protects "original works of authorship" that are fixed in a tangible form of expression. The fixation need not be directly perceptible, so long as it may be communicated with the aid of a machine or device. Copyrightable works include the following categories:

- (1) literary works;
- (2) musical works, including any accompanying words;
- (3) dramatic works, including any accompanying music;
- (4) pantomimes and choreographic works;
- (5) pictorial, graphic, and sculptural works;
- (6) motion pictures and other audiovisual works;
- (7) sound recordings; and
- (8) architectural works.

These categories should be viewed quite broadly: for example, computer programs and most "compilations" are registrable as "literary works;" maps and architectural plans are registrable as "pictorial, graphic, and sculptural works."

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## WHAT IS NOT PROTECTED BY COPYRIGHT

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Several categories of material are generally not eligible for statutory copyright protection. These include among others:

- Works that have *not* been fixed in a tangible form of expression. For example: choreographic works that have not been notated or recorded, or improvisational speeches or performances that have not been written or recorded.
- Titles, names, short phrases, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering, or coloring; mere listings of ingredients or contents.

- Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration.
- Works consisting *entirely* of information that is common property and containing no original authorship. For example: standard calendars, height and weight charts, tape measures and rulers, and lists or tables taken from public documents or other common sources.

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## HOW TO SECURE A COPYRIGHT

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### Copyright Secured Automatically Upon Creation

The way in which copyright protection is secured under the present law is frequently misunderstood. No publication or registration or other action in the Copyright Office is required to secure copyright (see following NOTE). There are, however, certain definite advantages to registration. (See page 7.)

Copyright is secured *automatically* when the work is created, and a work is "created" when it is fixed in a copy or phonorecord for the first time. "Copies" are material objects from which a work can be read or visually perceived either directly or with the aid of a machine or device, such as books, manuscripts, sheet music, film, videotape, or microfilm. "Phonorecords" are material objects embodying fixations of sounds (excluding, by statutory definition, motion picture soundtracks), such as audio tapes and phonograph disks. Thus, for example, a song (the "work") can be fixed in sheet music ("copies") or in phonograph disks ("phonorecords"), or both.

If a work is prepared over a period of time, the part of the work that is fixed on a particular date constitutes the created work as of that date.

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## PUBLICATION

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Publication is no longer the key to obtaining statutory copyright as it was under the Copyright Act of 1909. However, publication remains important to copyright owners.

The Copyright Act defines publication as follows:

"Publication" is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public perform-





ance or display of a work does not of itself constitute publication.

**NOTE:** Before 1978, statutory copyright was generally secured by the act of publication with notice of copyright, assuming compliance with all other relevant statutory conditions. Works in the public domain on January 1, 1978 (for example, works published without satisfying all conditions for securing statutory copyright under the Copyright Act of 1909) remain in the public domain under the current Act.

Statutory copyright could also be secured before 1978 by the act of registration in the case of certain unpublished works and works eligible for ad interim copyright. The current Act automatically extends to full term (section 304 sets the term) copyright for all works including those subject to ad interim copyright if ad interim registration has been made on or before June 30, 1978.

A further discussion of the definition of "publication" can be found in the legislative history of the Act. The legislative reports define "to the public" as distribution to persons under no explicit or implicit restrictions with respect to disclosure of the contents. The reports state that the definition makes it clear that the sale of phonorecords constitutes publication of the underlying work, for example, the musical, dramatic, or literary work embodied in a phonorecord. The reports also state that it is clear that any form of dissemination in which the material object does not change hands, for example, performances or displays on television, is *not* a publication no matter how many people are exposed to the work. However, when copies or phonorecords are offered for sale or lease to a group of wholesalers, broadcasters, or motion picture theaters, publication does take place if the purpose is further distribution, public performance, or public display.

Publication is an important concept in the copyright law for several reasons:

- When a work is published, it may bear a notice of copyright to identify the year of publication and the name of the copyright owner and to inform the public that the work is protected by copyright. Works published before March 1, 1989, **must** bear the notice or risk loss of copyright protection. (See discussion "notice of copyright" below.)
- Works that are published in the United States are subject to mandatory deposit with the Library of Congress. (See discussion on page 9 on "mandatory deposit.")

- Publication of a work can affect the limitations on the exclusive rights of the copyright owner that are set forth in sections 107 through 120 of the law.
- The year of publication may determine the duration of copyright protection for anonymous and pseudonymous works (when the author's identity is not revealed in the records of the Copyright Office) and for works made for hire.
- Deposit requirements for registration of published works differ from those for registration of unpublished works. (See discussion on page 8 of "registration" procedures.)

## NOTICE OF COPYRIGHT

For works first published on and after March 1, 1989, use of the copyright notice is optional, though highly recommended. Before March 1, 1989, the use of the notice was mandatory on all published works, and any work first published before that date must bear a notice or risk loss of copyright protection.

(The Copyright Office does not take a position on whether works first published with notice before March 1, 1989, and reprinted and distributed on and after March 1, 1989, must bear the copyright notice.)

Use of the notice is recommended because it informs the public that the work is protected by copyright, identifies the copyright owner, and shows the year of first publication. Furthermore, in the event that a work is infringed, if the work carries a proper notice, the court will not allow a defendant to claim "innocent infringement"—that is, that he or she did not realize that the work is protected. (A successful innocent infringement claim may result in a reduction in damages that the copyright owner would otherwise receive.)

The use of the copyright notice is the responsibility of the copyright owner and does not require advance permission from, or registration with, the Copyright Office.

## Form of Notice for Visually Perceptible Copies

The notice for visually perceptible copies should contain all of the following three elements:

1. **The symbol** © ( the letter C in a circle), or the word "Copyright," or the abbreviation "Copr.," and
2. **The year of first publication** of the work. In the case of compilations or derivative works incorporating previously published material, the year date of first publication of the compilation or derivative work is sufficient. The year date





may be omitted where a pictorial, graphic, or sculptural work, with accompanying textual matter, if any, is reproduced in or on greeting cards, postcards, stationery, jewelry, dolls, toys, or any useful article; and

3. **The name of the owner of copyright** in the work, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner.

Example: © 1992 John Doe

The "C in a circle" notice is used only on "visually perceptible copies." Certain kinds of works—for example, musical, dramatic, and literary works—may be fixed not in "copies" but by means of sound in an audio recording. Since audio recordings such as audio tapes and phonograph disks are "phonorecords" and not "copies," the "C in a circle" notice is not used to indicate protection of the underlying musical, dramatic, or literary work that is recorded.

### Form of Notice for Phonorecords of Sound Recordings

The copyright notice for phonorecords of sound recordings\* has somewhat different requirements. The notice appearing on phonorecords should contain the following three elements:

1. **The symbol** © (the letter P in a circle); and
2. **The year of first publication** of the sound recording; and
3. **The name of the owner of copyright** in the sound recording, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner. If the producer of the sound recording is named on the phonorecord labels or containers, and if no other name appears in conjunction with the notice, the producer's name shall be considered a part of the notice.

Example: © 1992 A.B.C., Inc.

**NOTE:** Since questions may arise from the use of variant forms of the notice, any form of the notice other than those given here should not be used without first seeking legal advice.

\* Sound recordings are defined as "works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.

### Position of Notice

The notice should be affixed to copies or phonorecords of the work in such a manner and location as to "give reasonable notice of the claim of copyright." The notice on phonorecords may appear on the surface of the phonorecord or on the phonorecord label or container, provided the manner of placement and location give reasonable notice of the claim. The three elements of the notice should ordinarily appear together on the copies or phonorecords. The Copyright Office has issued regulations concerning the form and position of the copyright notice in the *Code of Federal Regulations* (37 CFR Part 201). For more information, request Circular 3.

### Publications Incorporating United States Government Works

Works by the U.S. Government are not eligible for copyright protection. For works published on and after March 1, 1989, the previous notice requirement for works consisting primarily of one or more U.S. Government works has been eliminated. However, use of the copyright notice for these works is still strongly recommended. Use of a notice on such a work will defeat a claim of innocent infringement as previously described **provided** the notice also includes a statement that identifies one of the following: those portions of the work in which copyright is claimed or those portions that constitute U.S. Government material. An example is:

© 1992 Jane Brown. Copyright claimed in  
Chapters 7-10, exclusive of U.S. Government maps.

Works published before March 1, 1989, that consist primarily of one or more works of the U.S. Government **must** bear a notice and the identifying statement.

### Unpublished Works

To avoid an inadvertent publication without notice, the author or other owner of copyright may wish to place a copyright notice on any copies or phonorecords that leave his or her control. An appropriate notice for an unpublished work is: Unpublished work © 1992 Jane Doe.

### Effect of Omission of the Notice or of Error in the Name or Date

The Copyright Act, in sections 405 and 406, provides procedures for correcting errors and omissions of the copyright notice on works published on or after January 1, 1978, and before March 1, 1989.





In general, if a notice was omitted or an error was made on copies distributed between January 1, 1978, and March 1, 1989, the copyright was not automatically lost. Copyright protection may be maintained if registration for the work has been made before or is made within 5 years after the publication without notice, and a reasonable effort is made to add the notice to all copies or phonorecords that are distributed to the public in the United States after the omission has been discovered. For more information request Circular 3.

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## HOW LONG COPYRIGHT PROTECTION ENDURES

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### Works Originally Created On or After January 1, 1978

A work that is created (fixed in tangible form for the first time) on or after January 1, 1978, is automatically protected from the moment of its creation, and is ordinarily given a term enduring for the author's life, plus an additional 50 years after the author's death. In the case of "a joint work prepared by two or more authors who did not work for hire," the term lasts for 50 years after the last surviving author's death. For works made for hire, and for anonymous and pseudonymous works (unless the author's identity is revealed in Copyright Office records), the duration of copyright will be 75 years from publication or 100 years from creation, whichever is shorter.

### Works Originally Created Before January 1, 1978, But Not Published or Registered by That Date

Works that were created but not published or registered for copyright before January 1, 1978, have been automatically brought under the statute and are now given Federal copyright protection. The duration of copyright in these works will generally be computed in the same way as for works created on or after January 1, 1978: the life-plus-50 or 75/100-year terms will apply to them as well. The law provides that in no case will the term of copyright for works in this category expire before December 31, 2002, and for works published on or before December 31, 2002, the term of copyright will not expire before December 31, 2027.

### Works Originally Created and Published or Registered Before January 1, 1978

Under the law in effect before 1978, copyright was secured either on the date a work was published or on the date of registration if the work was registered in unpublished form. In either case, the copyright endured for a first term of 28 years

from the date it was secured. During the last (28th) year of the first term, the copyright was eligible for renewal. The current copyright law has extended the renewal term from 28 to 47 years for copyrights that were subsisting on January 1, 1978, making these works eligible for a total term of protection of 75 years. However, the copyright **must** be renewed to receive the 47-year period of added protection. This is accomplished by filing a properly completed Form RE accompanied by a \$12 filing fee in the Copyright Office before the end of the 28th calendar year of the original term.

For more detailed information on the copyright term, write to the Copyright Office and request Circulars 15a and 15t. For information on how to search the Copyright Office records concerning the copyright status of a work, request Circular 22.

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## TRANSFER OF COPYRIGHT

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Any or all of the exclusive rights, or any subdivision of those rights, of the copyright owner may be transferred, but the transfer of **exclusive** rights is not valid unless that transfer is in writing and signed by the owner of the rights conveyed (or such owner's duly authorized agent). Transfer of a right on a nonexclusive basis does not require a written agreement.

A copyright may also be conveyed by operation of law and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.

Copyright is a personal property right, and it is subject to the various state laws and regulations that govern the ownership, inheritance, or transfer of personal property as well as terms of contracts or conduct of business. For information about relevant state laws, consult an attorney.

Transfers of copyright are normally made by contract. The Copyright Office does not have or supply any forms for such transfers. However, the law does provide for the recordation in the Copyright Office of transfers of copyright ownership. Although recordation is not required to make a valid transfer between the parties, it does provide certain legal advantages and may be required to validate the transfer as against third parties. For information on recordation of transfers and other documents related to copyright, request Circular 12.

### Termination of Transfers

Under the previous law, the copyright in a work reverted to the author, if living, or if the author was not living, to other specified beneficiaries, provided a renewal claim was registered in the 28th year of the original term. The present law drops the renewal feature except for works already in the first term of statutory protection when the present law took effect.





Instead, the present law permits termination of a grant of rights after 35 years under certain conditions by serving written notice on the transferee within specified time limits.

For works already under statutory copyright protection before 1978, the present law provides a similar right of termination covering the newly added years that extended the former maximum term of the copyright from 56 to 75 years. For further information, request Circulars 15a and 15t.

## INTERNATIONAL COPYRIGHT PROTECTION

There is no such thing as an "international copyright" that will automatically protect an author's writings throughout the entire world. Protection against unauthorized use in a particular country depends, basically, on the national laws of that country. However, most countries do offer protection to foreign works under certain conditions, and these conditions have been greatly simplified by international copyright treaties and conventions. For a list of countries which maintain copyright relations with the United States, request Circular 38a.

The United States belongs to both global, multilateral copyright treaties—the Universal Copyright Convention (UCC) and the Berne Convention for the Protection of Literary and Artistic Works. The United States was a founding member of the UCC, which came into force on September 16, 1955. Generally, a work by a national or domiciliary of a country that is a member of the UCC or a work first published in a UCC country may claim protection under the UCC. If the work bears the notice of copyright in the form and position specified by the UCC, this notice will satisfy and substitute for any other formalities a UCC member country would otherwise impose as a condition of copyright. A UCC notice should consist of the symbol © accompanied by the name of the copyright proprietor and the year of first publication of the work.

By joining the Berne Convention on March 1, 1989, the United States gained protection for its authors in all member nations of the Berne Union with which the United States formerly had either no copyright relations or had bilateral treaty arrangements. Members of the Berne Union agree to a certain minimum level of copyright protection and agree to treat nationals of other member countries like their own nationals for purposes of copyright. A work first published in the United States or another Berne Union country (or first published in a non-Berne country, followed by publication within 30 days in a Berne Union country) is eligible for protection in all Berne member countries. There are no special requirements. For information on the legislation implementing the Berne Convention, request Circular 93 from

the Copyright Office.

An author who wishes protection for his or her work in a particular country should first find out the extent of protection of foreign works in that country. If possible, this should be done before the work is published anywhere, since protection may often depend on the facts existing at the time of *first* publication.

If the country in which protection is sought is a party to one of the international copyright conventions, the work may generally be protected by complying with the conditions of the convention. Even if the work cannot be brought under an international convention, protection under the specific provisions of the country's national laws may still be possible. Some countries, however, offer little or no copyright protection for foreign works.

## COPYRIGHT REGISTRATION

In general, copyright registration is a legal formality intended to make a public record of the basic facts of a particular copyright. However, except in two specific situations,\* registration is not a condition of copyright protection. Even though registration is not generally a requirement for protection, the copyright law provides several inducements or advantages to encourage copyright owners to make registration. Among these advantages are the following:

- Registration establishes a public record of the copyright claim;
- Before an infringement suit may be filed in court, registration is necessary for works of U.S. origin and for foreign works not originating in a Berne Union country. (For more information on when a work is of U.S. origin, request Circular 93.);
- If made before or within 5 years of publication, registration will establish prima facie evidence in court of the validity of the copyright and of the facts stated in the certificate; and
- If registration is made within 3 months after publication of the work or prior to an infringement of the work, statutory damages and attorney's fees will be available to the

\*Works published with notice of copyright before January 1, 1978, must be registered and renewed during the first 28-year term of copyright to maintain protection.

Under sections 405 and 406 of the Copyright Act, copyright registration may be required to preserve a copyright on a work first published before March 1, 1989, that would otherwise be invalidated because the copyright notice was omitted from the published copies or phonorecords, or the name or year date was omitted, or certain errors were made in the year date.





copyright owner in court actions. Otherwise, only an award of actual damages and profits is available to the copyright owner.

- Copyright registration allows the owner of the copyright to record the registration with the U.S. Customs Service for protection against the importation of infringing copies. For additional information, request Publication No. 563 from:

Commissioner of Customs  
ATTN: IPR Branch,  
Room 2104  
U.S. Customs Service  
1301 Constitution Avenue, N.W.  
Washington, D.C. 20229.

Registration may be made at any time within the life of the copyright. Unlike the law before 1978, when a work has been registered in unpublished form, it is not necessary to make another registration when the work becomes published (although the copyright owner may register the published edition, if desired).

## REGISTRATION PROCEDURES

### In General

- A. To register a work, send the following three elements *in the same envelope or package* to the Register of Copyrights, Copyright Office, Library of Congress, Washington, D.C. 20559: (see page 11 for what happens if the elements are sent separately).

1. A properly completed application form;
  2. A nonrefundable filing fee of \$20 for each application;\*
  3. A nonreturnable deposit of the work being registered. The deposit requirements vary in particular situations. The **general** requirements follow. Also note the information under "Special Deposit Requirements" immediately following this section.
- If the work is unpublished, one complete copy or phonorecord.
  - If the work was first published in the United States on or after January 1, 1978, two complete copies or phonorecords of the best edition.

- If the work was first published in the United States before January 1, 1978, two complete copies or phonorecords of the work as first published.
- If the work was first published outside the United States, one complete copy or phonorecord of the work as first published.

B. To register a renewal, send:

1. A properly completed RE application form; and
2. A nonrefundable filing fee of \$12 for each work.

**NOTE: COMPLETE THE APPLICATION FORM USING BLACK INK PEN OR TYPEWRITER.** You may photocopy blank application forms: **however**, photocopied forms submitted to the Copyright Office must be clear, legible, on a good grade of 8 1/2-inch by 11-inch white paper suitable for automatic feeding through a photocopier. The forms should be printed preferably in black ink, head-to-head (so that when you turn the sheet over, the top of page 2 is directly behind the top of page 1). **Forms not meeting these requirements will be returned.**

### Special Deposit Requirements

Special deposit requirements exist for many types of work. In some instances, only one copy is required for published works, in other instances only identifying material is required, and in still other instances, the deposit requirement may be unique. The following are three prominent examples of exceptions to the general deposit requirements:

- If the work is a motion picture, the deposit requirement is one complete copy of the unpublished or published motion picture **and** a separate written description of its contents, such as a continuity, press book, or synopsis.
- If the work is a literary, dramatic or musical work **published only on phonorecord**, the deposit requirement is one complete copy of the phonorecord.
- If the work is an unpublished or published computer program, the deposit requirement is one visually perceptible copy in source code of the **first and last 25 pages** of the program. For a program of fewer than 50 pages, the deposit is a copy of the entire program. (For more information on computer program registration, including deposits

\*Copyright fees are adjusted at 5-year intervals, based on increases in the Consumer Price Index. The next adjustment is due in 1995. Contact the Copyright Office in January 1995 for the new fee schedule.

For the fee structure for application Form SE/GROUP, see instructions on the form.





for revised programs and provisions for trade secrets, request Circular 61.)

- If the work is in a CD-ROM format, the deposit requirement is one complete copy of the material, that is, the CD-ROM, the operating software, and any manual(s) accompanying it. If the identical work is also available in print or hard copy form, send one complete copy of the print version **and** one complete copy of the CD-ROM version.
- For information about group registration of serials, request Circular 62.

In the case of works reproduced in three-dimensional copies, identifying material such as photographs or drawings is ordinarily required. Other examples of special deposit requirements (but by no means an exhaustive list) include many works of the visual arts, such as greeting cards, toys, fabric, oversized material (request Circular 40a); video games and other machine-readable audiovisual works (request Circular 61 and ML-387); automated databases (request Circular 65); and contributions to collective works.

If you are unsure of the deposit requirement for your work, write or call the Copyright Office and describe the work you wish to register.

### Unpublished Collections

A work may be registered in unpublished form as a "collection," with one application and one fee, under the following conditions:

- The elements of the collection are assembled in an orderly form;
- The combined elements bear a single title identifying the collection as a whole;
- The copyright claimant in all the elements and in the collection as a whole is the same; and
- All of the elements are by the same author, or, if they are by different authors, at least one of the authors has contributed copyrightable authorship to each element.

An unpublished collection is indexed in the *Catalog of Copyright Entries* only under the collection title.

### CORRECTIONS AND AMPLIFICATIONS OF EXISTING REGISTRATIONS

To correct an error in a copyright registration or to amplify the information given in a registration, file a supplementary

registration form—Form CA—with the Copyright Office. The information in a supplementary registration augments but does not supersede that contained in the earlier registration. Note also that a supplementary registration is not a substitute for an original registration, for a renewal registration, or for recording a transfer of ownership. For further information about supplementary registration, request Circular 8.

### MANDATORY DEPOSIT FOR WORKS PUBLISHED IN THE UNITED STATES

Although a copyright registration is not required, the Copyright Act establishes a mandatory deposit requirement for works published in the United States (see definition of "publication" on page 3 ). In general, the owner of copyright, or the owner of the exclusive right of publication in the work, has a legal obligation to deposit in the Copyright Office, within 3 months of publication in the United States, 2 copies (or, in the case of sound recordings, 2 phonorecords) for the use of the Library of Congress. Failure to make the deposit can result in fines and other penalties, but does not affect copyright protection.

Certain categories of works are **exempt entirely** from the mandatory deposit requirements, and the obligation is re-

#### NOTE: LIBRARY OF CONGRESS CATALOG CARD NUMBERS

A Library of Congress Catalog Card Number is different from a copyright registration number. The Cataloging in Publication (CIP) Division of the Library of Congress is responsible for assigning LC Catalog Card Numbers and is operationally separate from the Copyright Office. A book may be registered in or deposited with the Copyright Office but not necessarily cataloged and added to the Library's collections. For information about obtaining an LC Catalog Card Number, contact the CIP Division, Library of Congress, Washington, D.C. 20540. For information on International Standard Book Numbering (ISBN), write to: ISBN, R.R. Bowker/Martindale-Hubbell, 121 Charlton Road, New Providence, N.J. 07974. Call (908) 665-6770. For information on International Standard Serial Numbering (ISSN), write to: Library of Congress, National Serials Data Program, Washington, D.C. 20540.





duced for certain other categories. For further information about mandatory deposit, request Circular 7d.

## USE OF MANDATORY DEPOSIT TO SATISFY REGISTRATION REQUIREMENTS

For works published in the United States the Copyright Act contains a provision under which a single deposit can be made to satisfy both the deposit requirements for the Library and the registration requirements. In order to have this dual effect, the copies or phonorecords must be accompanied by the prescribed application and filing fee.

## WHO MAY FILE AN APPLICATION FORM

The following persons are legally entitled to submit an application form:

- The author. This is either the person who actually created the work, or, if the work was made for hire, the employer or other person for whom the work was prepared.
- The copyright claimant. The copyright claimant is defined in Copyright Office regulations as either the author of the work or a person or organization that has obtained ownership of all the rights under the copyright initially belonging to the author. This category includes a person or organization who has obtained by contract the right to claim legal title to the copyright in an application for copyright registration.
- The owner of exclusive right(s). Under the law, any of the exclusive rights that go to make up a copyright and any subdivision of them can be transferred and owned separately, even though the transfer may be limited in time or place of effect. The term "copyright owner" with respect to any one of the exclusive rights contained in a copyright refers to the owner of that particular right. Any owner of an exclusive right may apply for registration of a claim in the work.
- The duly authorized agent of such author, other copyright claimant, or owner of exclusive right(s). Any person authorized to act on behalf of the author, other copyright claimant, or owner of exclusive rights may apply for registration.

There is no requirement that applications be prepared or filed by an attorney.

## APPLICATION FORMS

### For Original Registration

Form TX: for published and unpublished nondramatic literary works

Form SE: for serials, works issued or intended to be issued in successive parts bearing numerical or chronological designations and intended to be continued indefinitely (periodicals, newspapers, magazines, newsletters, annuals, journals, etc.)

Short Form/SE and Form SE/GROUP: specialized SE forms for use when certain requirements are met

Form PA: for published and unpublished works of the performing arts (musical and dramatic works, pantomimes and choreographic works, motion pictures and other audiovisual works)

Form VA: for published and unpublished works of the visual arts (pictorial, graphic, and sculptural works, including architectural works)

Form SR: for published and unpublished sound recordings

### For Renewal Registration

Form RE: for claims to renewal copyright in works copyrighted under the law in effect through December 31, 1977 (1909 Copyright Act)

### For Corrections and Amplifications

Form CA: for supplementary registration to correct or amplify information given in the Copyright Office record of an earlier registration

### For a Group of Contributions to Periodicals

Form GR/CP: an adjunct application to be used for registration of a group of contributions to periodicals in addition to an application Form TX, PA, or VA

Free application forms are supplied by the Copyright Office.





#### COPYRIGHT OFFICE FORMS HOTLINE

**NOTE:** Requestors may order application forms and circulars at any time by telephoning (202) 707-9100. Orders will be recorded automatically and filled as quickly as possible. Please specify the kind and number of forms you are requesting.

#### MAILING INSTRUCTIONS

All applications and materials related to copyright registration should be addressed to the Register of Copyrights, Copyright Office, Library of Congress, Washington, D.C. 20559.

*The application, nonreturnable deposit (copies, phonorecords, or identifying material), and nonrefundable filing fee should be mailed in the same package.*

We suggest that you contact your local post office for information about mailing these materials at lower-cost fourth class postage rates.

#### WHAT HAPPENS IF THE THREE ELEMENTS ARE NOT RECEIVED TOGETHER

Applications and fees received without appropriate copies, phonorecords, or identifying material will **not** be processed and will ordinarily be returned. Unpublished deposits without applications or fees will ordinarily be returned, also. In most cases, published deposits received without applications and fees can be immediately transferred to the collections of the Library of Congress. This practice is in accordance with section 408 of the law, which provides that the published deposit required for the collections of the Library of Congress may be used for registration only if the deposit is "accompanied by the prescribed application and fee...."

After the deposit is received and transferred to another department of the Library for its collections or other disposition, it is no longer available to the Copyright Office. If you wish to register the work, you must deposit additional copies or phonorecords with your application and fee.

#### FEES

Do not send cash. A fee sent to the Copyright Office should be in the form of a money order, check, or bank draft payable to the Register of Copyrights; it should be securely attached to the application. A remittance from outside the United States should be payable in U.S. dollars and should be in the form of

an international money order or a draft drawn on a U.S. bank. Do not send a check drawn on a foreign bank.

#### EFFECTIVE DATE OF REGISTRATION

*A copyright registration is effective on the date the Copyright Office receives all of the required elements in acceptable form*, regardless of how long it then takes to process the application and mail the certificate of registration. The time the Copyright Office requires to process an application varies, depending on the amount of material the Office is receiving and the personnel available. Keep in mind that it may take a number of days for mailed material to reach the Copyright Office and for the certificate of registration to reach the recipient after being mailed by the Copyright Office.

If you are filing an application for copyright registration in the Copyright Office, you **will not** receive an acknowledgment that your application has been received, but you can expect:

- A letter or telephone call from a Copyright Office staff member if further information is needed;
- A certificate of registration to indicate the work has been registered; or
- If registration cannot be made, a letter explaining why it has been refused.

Please allow 120 days to receive a letter or certificate of registration.

If you want to know when the Copyright Office receives your material, you should send it by registered or certified mail and request a return receipt from the post office. Allow at least 3 weeks for the return of your receipt.

#### SEARCH OF COPYRIGHT OFFICE RECORDS

The records of the Copyright Office are open for inspection and searching by the public. Moreover, on request, the Copyright Office will search its records at the statutory rate of \$20 for each hour or fraction of an hour. For information on searching the Office records concerning the copyright status or ownership of a work, request Circulars 22 and 23.

#### AVAILABLE INFORMATION

This circular attempts to answer some of the questions that are frequently asked about copyright. For a list of other material published by the Copyright Office, request Circular 2, "Publications on Copyright." Any requests for Copyright Office





publications or special questions relating to copyright problems not mentioned in this circular should be addressed to the Copyright Office, LM 455, Library of Congress, Washington, D.C. 20559. To speak to a Copyright Information Specialist, call (202) 707-3000.

The Copyright Office is not permitted to give legal advice. If you need information or guidance on matters such as disputes over the ownership of a copyright, suits against possible infringers, the procedure for getting a work published, or the method of obtaining royalty payments, it may be necessary to consult an attorney.



**Copyright Office • Library of Congress • Washington, D.C. 20559**





# Copying Guidelines



## Training Manual

**kinko's®**  
the copy center



KINKO'S COPYRIGHT LAWYER

SHARON

KVmx 4369

1-880-946-4646 or 801-9763

# KINKO'S COPYING POLICY and GUIDELINES

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The revised Copying Policy is made possible through the combined efforts of the KSC Operations & Product Development, Training and Legal Departments, and the much appreciated suggestions from co-workers across the country.





## KINKO'S COPYING POLICY OBJECTIVES

At Kinko's, our primary objective is to take care of our customers. The Copying Policy and Guidelines are tools designed to provide information to both customers and co-workers about Kinko's policy on copying Copyrighted Works and Restricted Materials while complying with the law.

### Policy Objectives:

- ▼ Define Copyrighted Works and Restricted Materials
- ▼ Provide a uniform copying policy

### Guidelines Objectives:

- ▼ Explain the process for using the Copyright Permission Request Form
- ▼ Provide co-workers with guidelines for responding to customer questions and concerns in a positive manner
- ▼ Provide opportunities for co-workers to develop customer service skills in order to knowledgeably answer customer questions and concerns



# KINKO'S COPYING POLICY

## Copyrighted Works

The law provides the copyright holder the *exclusive* right to reproduce or to permit someone else to reproduce a copyrighted work. Kinko's policy on copying copyrighted works is designed to uphold the law. Kinko's requires written permission from the copyright holder in order to reproduce any copyrighted work.

Kinko's will provide its customers a Copyright Request/Permission form and will offer complimentary facsimile and telephone service to assist customers in obtaining written permission from the copyright holder.

## Restricted Materials

It is Kinko's policy to uphold the law against counterfeiting materials of monetary value and materials used for identification purposes. Such materials are called "Restricted Materials," and may be copied only in limited fashion.

Kinko's will make only black and white copies of currency, traveler's checks, stocks or bonds, provided such copies are reduced at least 75% or enlarged at least 150% of the size of the original material. Kinko's will make black and white copies of all other restricted materials. Please see page 6 for a list of restricted materials.

## Trademarks, Service Marks and Logos

Names, words and designs used to identify services or products, such as Kinko's®, are considered trademarks, service marks and/or logos. The owner of a trademark, service mark or logo has the exclusive right to use or reproduce them, without exception. Kinko's policy on trademarks, service marks and logos is designed to uphold the law and requires written permission from the owner in order to reproduce any trademark, service mark and/or logo.

Materials other than Copyrighted Works, Restricted Materials, Trademarks, Service Marks and Logos, may be copied according to customer specifications.

Kinko's retains the right to refuse copy service for any material which may violate the law.

This notice is filed with public agencies for informational and disclosure purposes only. A document containing information, especially relevant or documents that are part of the public record of a court proceeding (e.g., court filings, motions, depositions, discovery documents) may be subject to automatic disclosure and may be reproduced without copyright permission. Documents which are open filed will have a "File" stamp on the document itself. Documents which are going to be filed once they are accepted will have a "File" stamp by the customer. In such cases have the customer complete and sign the Release Form indicating these documents are intended to be or have been filed with public agencies. Please refer to the Release Form on page 12.





## WHAT IS A COPYRIGHT ?

Copyright is a form of protection provided by the laws of the United States to the authors of original works. Authors, referred to as copyright holders, include, photographers, singers, writers, architects, artists, composers, and publishers. The Copyright Act gives the copyright holder the *exclusive right to do and authorize others to do* the following:

- © Reproduce the work
- © Prepare derivative works
- © Distribute and /or sell copies of the original works
- © Perform the work publicly
- © Display the work publicly

*producers?*

The copyright law allows the author to assign the above rights, however, mere ownership of a book, manuscript, painting, photograph, or a copy of such items does not give the possessor of those items the right to copy them. The assignment of rights must be expressed in writing.

### Copyrighted Works

|                |              |                    |                 |
|----------------|--------------|--------------------|-----------------|
| Newspapers     | Sheet Music  | Cassette Tapes     | Films           |
| Magazines      | Plays        | Sculptures         | Paintings       |
| Cartoons       | Screen Plays | Videotapes         | Greeting Cards  |
| Trade Journals | Dance Steps  | Compact Discs      | Specialty Paper |
| Books          | Photographs  | Cartoon Characters |                 |
| Blueprints     | Maps         | Phonograph Records |                 |

*stamps*  
*business documents*

Works published by the United States Government are not copyrighted and do not require copyright permission from the United States Government. However, some U.S. Government publications are restricted in the interest of national security. Please check for any notices on such publications which would indicate "top secret", confidential or the like. In addition, the United States Postal Service is an incorporated business and is entitled to copyright protection on postage stamp designs, so written permission from the Postal Service is required to reproduce any stamp design.

Documents filed with public agencies for informational disclosure purposes (e.g., a prospectus, business license application, corporate by-laws), or documents that are part of the public record of a court proceeding (e.g., complaints, motions, depositions, discovery documents) may be copied to facilitate the required disclosure without copyright permission. Documents which have been filed will have a "filed" stamp on the document itself. Documents which are going to be filed once they are copied will have to be identified by the customer. In each case have the customer complete and sign the Release Form indicating these documents are intended to be or have been filed with public agencies. Please refer to the Release Form on page 13.





### How To Tell If A Work Is Copyrighted

A work that is copyrighted gains copyright protection immediately upon creation. The "©" symbol, the word "Copyright" followed by a year and a name, or other similar markings may appear on the work. Such markings are not required to establish that the work is copyrighted.

### The Life Of A Copyright

- Any works created after January 1, 1978 is copyright protected for the life of the author plus 50 years.  

$$\begin{array}{r} 50 \\ 2028 - 2078 \end{array}$$
- Any work created before January 1, 1978 is copyright protected for 28 years. If the copyright holder renewed the copyright, then protection continues for an additional 47 years, for a total of 75 years of copyright protection.

To help customers obtain information about the life of a copyright, the U.S. Copyright Office in Washington, D.C. and some local law libraries keep a catalog of copyright entries which lists copyrights by the name of copyright holder or title of the work. The telephone number for the U.S. Copyright Office is (202) 707-3000.

If the copyright notice does not indicate a year date, then make a note of that fact on the copyright permission form. The customer must contact the copyright holder named on the item to obtain permission to reproduce the item.

The website form is intended to provide as well as one, solutions to the needs of public policy. However, it does not replace the written permission from the copyright holder. It is recommended that you also obtain written permission from copyright holders whose works are used in your documents, such as a local newspaper. Please see page 12 for a sample written permission request form.

### Locating The Copyright Holder

There are several resources available to help the customer obtain the copyright holder's written permission. The Copyright Clearance Center, telephone numbers of the Copyright Office, Professor of Law, University of Arizona, and the Copyright Clearance Center (CCC). The CCC is a for-profit business which issues copyright licenses for copyrighted works. Refer to the telephone list on page 22 for additional resources.

The U.S. Copyright office and some local law libraries maintain a catalog of copyright entries to help the customer locate the copyright holder. Have the local law library's telephone number readily available for your customers' use.



# PRACTICAL APPLICATION OF COPYRIGHT LAW

## Fair Use and Public Policy

Copyrights can be considered limited monopolies on intellectual property. The law protects the original work from being "ripped-off" or used by someone other than the copyright holder. However, the copyright law does its best to promote educational and cultural progress and benefit the public.

If copying the copyrighted work is used to serve public interest, such as education or news reporting, such copying may be considered "fair use" and may be allowed without the written permission of the copyright holder. However, such copying is limited to portions of a copyrighted item, such as one copy of a poem or a portion of a chapter in a book.

The United States Copyright Office has issued guidelines for making copies for teachers, librarians and researchers/students. A copy of the guidelines is attached as Exhibit "A" for your reference. To date, the Copyright Office has not issued guidelines for making copies for personal use which makes it difficult to predict whether a particular use will be considered "fair" in the eyes of the copyright holder and the court. Therefore it is Kinko's policy not to make "fair use" determinations.

If the customer claims the use is "fair" have the customer complete and sign the Release Form. The release form is designed to allow the customer to indicate intended uses customarily accepted as fair use. Should the customer's intended uses not fall within the categories identified in the release form, the customer must obtain permission from the copyright holder. A copy of the release form is on page 13 for your reference.

The release form is intended to provide service to our customers in the interest of public policy, however, it does not replace the written permission from the copyright holder. It is recommended that your store obtain blanket permissions from copyright holders whose works are most requested by your customers, such as a local newspaper. Please see page 12 for a sample blanket permission request form.

## Locating The Copyright Holder

There are a number of resources available to help the customer obtain the copyright holder's written permission. The copying brochure has telephone numbers of the Copyright Office, Professional Photographer's of America, and the Copyright Clearance Center (CCC). The CCC is a for-profit business which issues copyright licenses for copyrighted works. Refer to the telephone list on page 23 for additional resources.

The U.S. Copyright office and some local law libraries maintain a catalog of copyright entries to help the customer locate the copyright holder. Have the local law library's telephone number readily available for your customers' use.





## WHAT IS RESTRICTED MATERIAL?

In the case of literary works, such as books, trade journals, newspapers and magazines, a publisher's directory is available for purchase from Reed Reference Publishing. Reed Reference Publishing has arranged for Kinko's stores to receive a 20% discount on the purchase price of the publisher's directory. To order, contact Michael Murzenski at 800-521-8110, extension 3742.

In addition, you may offer the customer a telephone directory to locate a local copyright holder such as the photographer or architect.

### Copyright Holder Unknown

It may be difficult to locate the copyright holder if the copyrighted work is old, out-of-print or from a foreign country, or the copyright holder is not named on the item. The customer must make every effort to exhaust all available resources to locate the copyright holder. If the copyright holder can not be located or is unknown, then the practical approach is to provide service to the customer. The customer must indicate on the *Release Form* what efforts have been made to locate the copyright holder. File the *Release Form* in chronological order with all other completed copyright permission forms and release forms. Please refer to the Retention policy on page 14.

It is crucial to distinguish between the fact a copyright holder is unresponsive and a copyright holder can not be located.

If the customer has not received a response from a copyright holder, for example Sports Illustrated, Olan Mills Photography Studios, or other contemporary copyright holder but it is possible to locate the copyright holder, the written permission policy must be enforced.

### Copying Restricted Materials

- \* Color reproductions of paper currency, checks, or bonds for any purpose are illegal.
- \* Copies of U.S. and foreign currencies are permissible for any non-fraudulent purpose provided the items are reproduced in black and white and are reduced to 75% or enlarged to 150% of the item's original size.
- \* Copies of U.S. and foreign postage stamps are permissible for any non-fraudulent purpose. Black and white copies of uncancelled postage stamps are permissible provided they are reduced to 75% or enlarged to 150%. Color copies of uncancelled postage stamps are permitted provided the Postal Service has granted written permission to do so and the copies are reduced to 75% or enlarged to 150%. To identify a cancelled postage stamp, the stamp will bear a mark across the stamp indicating it has been used for postage. Keep in mind the art designs of postage stamps are copyright protected, therefore written permission from the Postal Service is necessary.





## WHAT IS RESTRICTED MATERIAL?

Restricted Materials differ from copyrighted works in that Restricted Materials are items with monetary value, such as currency and postage stamps, or items that can be used to prove someone's identity, such as a driver's license or birth certificate. The reproduction of such materials is restricted to prevent counterfeiting and fraud. Below is a list of some items that are considered Restricted Materials. Please note that this list is not exhaustive and is provided only as an example.

Items like the following can only be reproduced in black and white, single sided, and must be reduced to 75% or enlarged to 150% of their original size.

- Paper Currency
- Money Orders
- Treasury Notes
- Bonds
- Gold Certificates
- Checks/Drafts
- Travelers Checks
- Postage Stamps (designs are copyright protected by U.S. Postal Service)

Items like the following can only be reproduced in black and white.

- Drivers Licenses/Identification Cards
- Passports
- Birth Certificates
- Badges
- Transportation Tickets
- Raffle Tickets
- Certificates of U.S. Citizenship
- Immigration Papers
- Automobile Certificates of Title
- Diplomas
- Entrance Tickets (e.g., sports games, concerts)

### Copying Restricted Materials

- Color reproductions of paper currency, checks, or bonds for any purpose are illegal.
- Copies of U.S. and foreign currencies are permissible for any non-fraudulent purpose provided the items are reproduced in black and white and are reduced to 75% or enlarged to 150% of the items' original size.
- Copies of U.S. and foreign postage stamps are permissible for any non-fraudulent purpose. Black and white copies of uncanceled postage stamps are permissible provided they are reduced to 75% or enlarged to 150%. Color copies of canceled postage stamps must be reduced to 75% or enlarged to 150%. Color copies of uncanceled postage stamps are permitted provided the Postal Service has granted written permission to do so and the copies are reduced to 75% or enlarged to 150%. To identify a canceled postage stamp, the stamp will bear a mark across the stamp indicating it has been used for postage. Keep in mind the art designs of postage stamps are copyright protected, therefore written permission from the Postal Service is necessary.



- Contact the police if you suspect counterfeiting activities are occurring in your store. Be aware of any distinct characteristics of the suspect, such as physical description, vehicle type, color and license plate number. Be aware of any other information which may assist the police apprehend the suspect. At no time should you confront the suspect.

The following items are included in the kit:

- 1. Copying Policy Manual and Guidelines
- 2. The Copying Brochure
- 3. The Quick Reference Copying Policy Rule
- 4. Copying Policy Package (for all regions and companies)
- 5. Copying Policy Poster

### The Copying Policy and Guidelines

The Copying Policy is designed to assist co-workers meet our customers' copying needs, while ensuring that Kinko's complies with the laws regarding Copyrights and Restricted Materials. Each store must have at least one hard copy of the policy posted in the store. It is strongly recommended that stores keep a copy of the policy around work station. It is to be considered confidential and is not to be given to customers.

### The Copying Brochure

The Copying Brochure is a summary of the Kinko's Copying Policy. It is a tool to help answer our customers' and co-workers' questions and educates them on Kinko's policy regarding Copyrights and Restricted Materials. The brochure is to be placed in the view of, and be easily accessible to our customers.

The brochure is made up of four parts:

1. Kinko's Policy on Copyrighted Works
2. Kinko's Policy on Restricted Materials
3. Copyright Permission Request Form
4. Telephone Numbers for the U. S. Copyright Office, Treasury Department, and Postal Service, Professional Photographers of America, and the Copyright Clearance Center.

The permission request form is to be used whenever a customer requests a copy of a copyrighted work. To assist customers in obtaining the required permission, offer a complimentary telephone call and / or fax to the copyright holder. Co-workers may accept any written form of permission, provided it is signed by the copyright holder and it identifies:

- \* The work to be reproduced
- \* The purpose of the reproduction
- \* The number of reproductions which may be made

Two Hundred brochures are included in each kit. Additional brochures are available through KSC Distribution Services, item number 246532.





## THE COPYING COMPLIANCE KIT

The Kinko's Copying Compliance Kit is available through KSC Distribution Services, item number 230202. The following tools are included in the kit:

- © Copying Policy Manual and Guidelines
- © The Copying Brochure
- © The Quick Reference Copying Policy Ruler
- © Copying Policy Stickers (for all copiers and computers)
- © Copying Policy Poster

### The Copying Policy and Guidelines

The Copying Policy is designed to assist co-workers meet our customers' copying needs, while ensuring that Kinko's complies with the laws regarding Copyrights and Restricted Materials. Each store must have at least one hard copy of the policy posted in the store. It is strongly recommended that stores keep a copy of the policy at each work station. It is to be considered confidential and is not itself to be given to customers.

### The Copying Brochure

The Copying Brochure is a summary of the Kinko's Copying Policy. It is a tool to help answer our customers' and co-workers' questions and educates them on Kinko's policy regarding Copyrights and Restricted Materials. The brochure is to be placed in the view of, and be easily accessible to our customers.

The brochure is made up of four parts:

1. Kinko's Policy on Copyrighted Works
2. Kinko's Policy on Restricted Materials
3. Copyright Permission Request Form
4. Telephone Numbers for the U. S. Copyright Office, Treasury Department, and Postal Service, Professional Photographers of America, and the Copyright Clearance Center.

The permission request form is to be used whenever a customer requests a copy of a copyrighted work. To assist customers in obtaining the required permission, offer a complimentary telephone call and/or fax to the copyright holder. Co-workers may accept any *written* form of permission, provided it is signed by the copyright holder and it identifies:

- The work to be reproduced
- The purpose of the reproduction
- The number of reproductions which may be made

Two Hundred brochures are included in each kit. Additional brochures are available through KSC Distribution Services, item number 240332.





### The Quick Reference Copying Policy Ruler

The Quick Reference Ruler is a ruler with a summary of the Kinko's Copying Policy. It is designed to be used as a quick reference tool by co-workers and customers.

Thirty rulers are included in each kit. Additional rulers are available through KSC Distribution services, item number 230081.

### The Copying Policy Stickers

The copying policy sticker is a summary of the Kinko's Copying Policy. A sticker must be placed on *every* machine in the store (both self serve and full serve copiers and computers).

Twenty-five stickers are included in each kit. Additional stickers are available through KSC Distribution Services, item number 270141.

### The Copying Policy Posters

The copying policy poster is a summary of the Kinko's Copying Policy. A poster is to be placed in the self-serve areas of each store.

One poster is included in each kit. Additional posters and frames are available through KSC Distribution Services, item number 270140.

I, \_\_\_\_\_ (customer name), warrant that the information provided herein is true and correct and I agree to indemnify and hold Kinko's harmless from any suit, demand, or claim made against Kinko's by reason of breach of this warranty and I agree to pay any judgment or reasonable settlement or reasonable costs from any such suit, demand, or claim, and to pay any attorney's fee incurred by Kinko's in defending against such suit, demand, or claim. I agree that Kinko's may provide a copy of this form to anyone claiming infringement of copyright in the item(s) described above.

Customer Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Driver's License No. (or other valid photo identification no.): \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

### COPYRIGHT PERMISSION APPROVAL

(Copyright owner response, check only one)

☐ I, the copyright owner of the item(s) described above, relinquish copyright protection for the above described item(s) subject to the following conditions (i.e., Number of copies, specific usage, size of copies, purpose, etc.): \_\_\_\_\_

☐ I, the copyright owner of the item(s) described above hereby deny your request to reproduce such items.

Copyright Owner Name: \_\_\_\_\_ Business Name: \_\_\_\_\_  
Address: \_\_\_\_\_ Telephone Number: \_\_\_\_\_  
Signature: \_\_\_\_\_ Date: \_\_\_\_\_



# COPYRIGHT PERMISSION FORMS

The following is a sample of a Copyright Permission Request Form. (A legend follows identifying the information needed to complete the form.)

## COPYRIGHT PERMISSION REQUEST

To ensure compliance with the law, Kinko's will not reproduce copyrighted works unless the customer has obtained written permission from the copyright holder.

TO: 1 (copyright holder) FAX: 2

I, 3 (customer name) request permission to reproduce the item(s) described below for the following uses: (Check all intended uses)

|                                               |          |                                         |
|-----------------------------------------------|----------|-----------------------------------------|
| <input type="checkbox"/> Personal             | <u>4</u> | <input type="checkbox"/> News Reporting |
| <input type="checkbox"/> Scholarship/Research |          | <input type="checkbox"/> Commercial     |
| <input type="checkbox"/> Comment/Criticism    |          | <input type="checkbox"/> Teaching       |
| <input type="checkbox"/> Other/Describe       |          |                                         |

## DESCRIPTION OF ITEM TO BE COPIED

Title: 5

Page number(s): 6 Number of copies: 7

In the case of photographs describe the portrait subject and/or pose:

8

Describe in detail how the copies will be used and distributed:

9

I, 10 (customer name), warrant that the information provided herein is true and correct and I agree to indemnify and hold Kinko's harmless from any suit, demand, or claim made against Kinko's by reason of breach of this warranty, and I agree to pay any judgment or reasonable settlement offer resulting from any such suit, demand, or claim, and to pay any attorney's fees incurred by Kinko's in defending against such suit, demand, or claim. I agree that Kinko's may provide a copy of this form to anyone claiming infringement of copyright in the item(s) described above.

Customer Signature: 11 Date: 12

Driver's License No. (or other similar photo identification no.) 13

Address: 14

Telephone: 15 Fax: 16

## COPYRIGHT PERMISSION APPROVAL

(Copyright owner response, check only one)

17 I, the copyright owner of the item(s) described above, relinquish copyright protection for the above described item(s) subject to the following conditions (i.e., Number of copies, specific usage, size of copies, purpose, etc.) 18

17 I, the copyright owner of the item(s) described above hereby deny your request to reproduce such items.

Copyright Owner Name 19 Business Name: 20

Address: 21 Telephone Number: 22

Signature: 23 Date: 24





## LEGEND TO COPYRIGHT PERMISSION FORM

1. Name of copyright holder. If customer is copyright holder, then put customer name here and complete the form accordingly
2. Copyright holder's facsimile number
3. Customer's name
4. Customer checks all intended uses
5. Title of book, magazine, journal, etc. Titles of articles may be included.
6. The page numbers to be copied
7. The number of copies to be made
8. If the item is a photograph, describe the portrait subject and/or pose
9. Describe how the copies will be distributed
10. Customer name. This agreement is not a substitute for copyright permission.
11. Customer signature.
12. The date customer signed form
13. Picture I.D. of the customer should be provided when customer is copyright holder.
14. Customer address
15. Customer telephone number
16. Customer facsimile number
17. The copyright holder must check one of the permission options
18. Copyright holder must specify conditions of granting permission
19. Copyright holder name
20. Copyright holder business name
21. Copyright holder address
22. Copyright holder telephone number
23. Copyright holder signature
24. The date copyright holder signed permission

If customer claims to be the copyright holder have the customer complete and sign the Release Form.

Sincerely,  
(Corporate Name)

(Name)

(Title)





## BLANKET PERMISSION REQUEST FORM LETTER

The following form letter can be used to request blanket permission for the most common requested items with copyright protection. You may tailor this form letter to suit your actual needs. Please note, this is not intended for use with course packets.

(current date) \_\_\_\_\_

(copyright holder name & address)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Request for Permission to Reproduce Copyrighted Material

Dear \_\_\_\_\_:

It has been our experience that Kinko's customers request copies of articles and/or photographs published in your publication which are of interest to them, whether it be personal, educational or noncommercial.

In an effort to accommodate our customers needs within the boundaries of the copyright law we request permission to reproduce an article and/or photograph for which our customer has requested such service. Your permission will allow us the opportunity to serve our customers and community more effectively and expeditiously.

We understand the need for any limitations associated with granting such permission and request that you state any such limitations in your written response. We also understand that you may decline this request, however, before such a decision is made we would appreciate the opportunity to discuss any options with you.

We look forward to receiving your affirmative response.

Sincerely,  
(Corporation Name)

(Name)

(Title)



# RELEASE FORM

The following is a sample Release Form. You may reproduce this for use in any Kinko's store.

## RELEASE FORM

To ensure compliance with the copyright law, Kinko's will not reproduce copyrighted materials unless the customer certifies the materials identified may be copied by Kinko's without liability for one of the following reasons:

☐ I, \_\_\_\_\_, (customer name), am the copyright owner. (Identification must be provided to verify ownership)

☐ I, \_\_\_\_\_, (customer name), am an agent of the copyright owner acting under authority of the copyright owner who has granted me copyright permission. (proof of agency relationship must be provided)

☐ I, \_\_\_\_\_, (customer name), am the author of the copyrighted item and am requesting only one copy, and in the case of a book, only a portion which does not exceed a chapter, of the book. (Identification must be provided to verify authorship)

☐ I, \_\_\_\_\_, (customer name), am a teacher or student and am requesting only one copy of the copyrighted item for educational purposes in a not-for-profit educational institution; in the case of a book, only a portion which does not exceed a chapter of the book; in the case of multiple copies for classroom use, a poem not to exceed 250 words, or an article, story or essay, less than 2,500 words. These number limitations may be expanded to complete an unfinished line of a poem or prose paragraph. At no time will the copies be included in a course packet, anthology or other similar material.

☐ I, \_\_\_\_\_, (customer name), do not know who the copyright owner is and there is no copyright notice, nor any other notice on the copyrighted item indicating who the copyright owner is.

☐ I, \_\_\_\_\_, (customer name), am requesting copies of documents which have been and are intended to be filed with a public agency for informational disclosure purpose, or these documents are part or intended to be part of the public record in a court proceeding.

## DESCRIPTION OF ITEM TO BE COPIED

Title : \_\_\_\_\_

Page number(s): \_\_\_\_\_ Number of copies: \_\_\_\_\_

In the case of photographs describe the portrait subject and/or pose: \_\_\_\_\_

Describe in detail how the copies will be used and distributed: \_\_\_\_\_

I, \_\_\_\_\_ (customer name), warrant that the information provided herein is true and correct and I agree to indemnify and hold Kinko's harmless from any suit, demand, or claim made against Kinko's by reason of breach of this warranty, and I agree to pay any judgment or reasonable settlement offer resulting from any such suit, demand, or claim, and to pay any attorney's fees incurred by Kinko's in defending against such suit, demand, or claim. I agree that Kinko's may provide a copy of this form to anyone claiming infringement of copyright in the item(s) described above.

Customer Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Driver's License No. (or other similar photo identification no.) \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_





## RETENTION POLICY

Retain the completed copyright permission and release forms and/or letters, whether they grant or deny permission for a period of four (4) years. These files should be organized in chronological order. If the customer requests, provide a complimentary copy of the completed permission and/or release form.

## CUSTOMER SERVICE TIPS

Good customer service at Kinko's means smooth order-taking, easy-to-understand systems and reasonable turnaround time. How can you ensure good customer service while adhering to the Copying Guidelines?

- ▼ Know the Kinko's Copying Policy.
- ▼ Always give the customer a Copying Brochure and go over the information in the brochure with the customer.
- ▼ Always offer a complimentary fax and/or telephone call to the copyright holder to assist in obtaining permission.
- ▼ Have telephone numbers of local libraries, photography studios, architects, and newspapers readily accessible.





## TYPICAL CUSTOMER SCENARIOS

Following are some scenarios frequently encountered by Kinko's co-workers and suggestions for how to handle them.

In every case, offer the customer a Kinko's Copying Brochure and refer to the applicable section on copyrights or restricted material. This will let the customer know that the copyright holder has the *exclusive* right to reproduce or to permit someone else to reproduce the copyrighted work. In the case of copyrighted works, offer the customer a complimentary telephone call or fax to assist customer in obtaining the required written permission from the copyright holder.

Taking time to carefully explain the service Kinko's can provide will help the customer understand we have a common goal; to make the customer copies.

### RESTRICTED MATERIALS

- **Customer requests color copies of traveler's checks.**

Let the customer know color reproductions of paper currency, checks, or bonds for any purpose are illegal. Offer black and white copies of such items in the 75% reduction or 150% enlarged size.

- **Customer requests color copies of their passport or driver's license.**

Let the customer know that items used for identification purposes can only be copied in black and white. This policy is designed to avoid counterfeiting an ID. Offer to copy such items in black and white.

- **Customer requests Desk Top Publishing to typeset and print business checks.**

Inform the customer that all checks must comply with the guidelines followed by the American Banking Association. These guidelines are known as X9 Publications, are designed to avoid fraudulent check printing. The X9 Publications are distributed by Washington Publishers EDI Support Services, Inc. You can call 1-800-334-4912 for a catalog and price list of X9 Publications.

- **Customer requests color copies of personal checks.**

Let the customer know that checks are restricted materials and may only be copied in black and white and must be reduced to 75% or enlarged to 150% its original size. This policy is designed to avoid fraudulent printing of checks.



## COPYRIGHT SCENARIOS

- Customer requests a copy of a photograph which does not bear a copyright notice or watermark. Further, the photograph has a copyright notice.

Let the customer know that you are able to copy the postage stamps only if the stamps are enlarged to at least 150% or reduced to at least 75% the original size. This policy is designed to avoid counterfeit stamps. Let the customer know that the Postal Service's stamp design is entitled to copyright protection and written permission to reproduce the stamp is also required. The telephone number for the Postal Service is provided on the copying brochure. Offer a complimentary fax to assist the customer in obtaining written permission.

The customer may not be aware of the copyright laws and the necessary method of obtaining permission or signing the release form, therefore have a Copying Guidelines FOP Brochure readily available for the customer.

- Customer requests a copy of an item and claims to be the copyright holder.

The customer's identification must match the copyright holder's name on the item. Any picture ID with the customer's signature is acceptable proof of identification.

Have the customer complete and sign the release form, and then provided the requested service.

- Customer requests a copy of a copyrighted item, such as an article in a magazine or newspaper, a chapter in a book, or a photograph which indicates a form of copyright notice or the author's or photographer's name respectively.

Ask the customer if he or she has written permission from the copyright holder to reproduce the item.

If the customer responds he or she is the copyright holder have the customer complete and sign the release form.

If the customer is not the copyright holder and does not have written permission, let the customer know that copying the item without the copyright holder's permission would be an infringement of their exclusive rights. Have the Copying Guidelines FOP Brochure available to give to the customer. Offer a complimentary telephone call or fax to the copyright holder to assist the customer in obtaining the necessary written permission.

If the customer claims "Fair use" or is the copyright holder, have the customer complete and sign the Release Form.





## COPYRIGHTED WORKS

- **Customer requests a copy of a photograph which does not bear a copyright notice or symbol (e.g., ©, copr. or copyright, 1994, Jane Smith). Further, the photograph has a mock scenery background.**

Ask the customer if he/she has permission from the photographer. If the customer does not have permission AND knows the name of the photographer, assist the customer in obtaining written permission. However, if the customer is unaware of who the photographer is then have the customer complete and sign the *Release Form* then provide the customer the services requested. The customer must indicate on the Release form that they are unaware of who the photographer is.

The customer may not be aware of the copyright laws and the reasoning behind obtaining permission or signing the release form, therefore have a Copying Guidelines POP Brochure readily available for the customer.

- **Customer requests a copy of an item and claims to be the copyright holder.**

The customer's identification must match the copyright holder's name on the item. Any picture ID with the customer's signature is acceptable proof of identification.

Have the customer complete and sign the release form and then provided the requested service.

- **Customer requests a copy of a copyrighted item, such as an article in a magazine or newspaper, a chapter in a book, or a photograph which indicates a form of copyright notice or the author's or photographer's name respectively.**

Ask the customer if he or she has written permission from the copyright holder to reproduce the item.

If the customer responds he or she is the copyright holder have the customer complete and sign the release form.

If the customer is not the copyright holder and does not have written permission, let the customer know that copying the item without the copyright holder's permission would be an infringement of their exclusive rights. Have the Copying Guidelines POP Brochure available to give to the customer. Offer a complimentary telephone call or fax to the copyright holder to assist the customer in obtaining the necessary written permission.

If the customer claims "fair use" or is the copyright holder, have the customer complete and sign the Release Form.





- **Customer does not agree with the need to obtain written permission from the copyright holder. Customer states they can just go to the self-serve machines or even another copy shop.**

Let the customer know that all copying machines are subject to the copyright law and point out the Kinko's copying policy sticker that is located on the machine. The customer will have to make their own determination in the appropriate use of the self-service machines.

- **Customer claims he or she was able to get the item copied at Kinko's in the past.**

Apologize for the inconsistency and let the customer know that we strive for consistency in our services. Explain that copyright holders can sue Kinko's and the customer for infringement, so the policy protects both. Offer the customer a complimentary telephone call or fax to assist in obtaining the required written permission.

- **Customer requests a book be scanned onto the computer.**

Let the customer know that any form of reproduction of a copyrighted work requires written permission from the copyright holder. This includes scanning, faxing, transparencies, or any image transfer onto any medium such as mugs, T-shirts and plaques. Offer the customer a complimentary telephone call or fax to assist in obtaining the required written permission.

- **Customer has items that appear to be professionally created, such as a photograph or a portion of a book or magazine, however the item bears no professional photographer's stamp or has no title page. The item may be an original or copy.**

Ask the customer if he or she has written permission from the copyright holder to reproduce the item.

If the customer does not have written permission and does not know who the copyright holder is have the customer complete and sign the release form indicating that the customer does not know who the copyright holder is and there is nothing on the item which indicates the name of the copyright holder or a copyright notice.

- **Customer becomes angry.**

Let the customer vent. Show the customer that you understand the inconvenience and that Kinko's copying policy is designed to comply with the law, which is to protect the interests of the copyright holder and the customer alike.

Offer solutions, such as a complimentary telephone call or fax to assist the customer obtain the necessary written permission from the copyright holder and the customer alike.



## HOW WELL DO YOU KNOW THE COPYING POLICY?

### TRAINING SELF TEST

The following scenarios are designed to help you apply the Kinko's Copying Policy. After you have read each scenario, describe how you would respond to the customer's request and explain why. (Hint: Each response should include references to the policy and customer services tips.) Sample answers are provided on page 21.

1. A model wants an 8"x11" photo of herself reduced to 5"x7" and then turned into 25 postcards so she can mail them to all the advertising agencies in town.
2. An architecture student wants to copy blueprint plans from the firm where he works so he can study them more carefully.
3. A student wants two pages copied from a computer software manual.
4. A representative of an advertising company wants a color copy of a color copy of a Garfield cartoon enlarged and laminated.
5. A professional speaker wants copies of a set of transparencies. The transparencies have written text and graphics. The speaker claims she created the entire text, but the graphics were borrowed from a newspaper.
6. A couple wants copies of a photo of their new baby enlarged and laminated. The photo appears to have a mock seasonal landscape background and there is no copyright symbol nor name of a photographer on the photo.
7. A law student wants to copy a page of a local street map. The law student claims it is fair use and written permission is not required.
8. A local Realtor presents a Polaroid® photograph depicting a painting on the interior wall of a house. The Realtor wants a color copy of the painting. The Realtor asks if it is possible to only copy the painting so that the entire sheet of paper is the painting and the rest of the images on the photograph are omitted.
9. An Elvis fan wants to make a poster from an Elvis Presley postage stamp.
10. A college student wants to make color copies of a driver license and claims the copy is needed for employment reasons.





11. A couple wants to make color copies of a few traveler's checks, color copies of their stock certificates, and color copies of their birth certificates. They explain their attorney needs the color copies for their family trust documents.
12. If a customer sends via courier a purchase order or letter on company letterhead along with originals which are copyrighted from the company requesting copies for delivery, is copyright permission required?
13. Is food such as a Life Saver copyrighted and need copyright permission?

Copyright © 1995 by The Copyright Clearance Center, Inc.

1. Yes, if the customer is requesting copies of the original work for their own use, then the copyright owner's permission is required. If the customer is requesting copies for the purpose of making a new work, then the copyright owner's permission is not required.

2. No, it is not required.

3. Yes, if the customer is requesting copies of the original work for their own use, then the copyright owner's permission is required. If the customer is requesting copies for the purpose of making a new work, then the copyright owner's permission is not required.

4. Yes, if the customer is requesting copies of the original work for their own use, then the copyright owner's permission is required. If the customer is requesting copies for the purpose of making a new work, then the copyright owner's permission is not required.

5. Yes, if the customer is requesting copies of the original work for their own use, then the copyright owner's permission is required. If the customer is requesting copies for the purpose of making a new work, then the copyright owner's permission is not required.

6. Yes, if the customer is requesting copies of the original work for their own use, then the copyright owner's permission is required. If the customer is requesting copies for the purpose of making a new work, then the copyright owner's permission is not required.

7. Provide the customer with the appropriate form to request permission. If the customer is requesting copies for the purpose of making a new work, then the copyright owner's permission is not required.

8. Let the customer know that the work is copyrighted. If the customer is requesting copies for the purpose of making a new work, then the copyright owner's permission is not required. If the customer is requesting copies for their own use, then the copyright owner's permission is required.

9. Show the designer of the postage stamp the appropriate form to request permission. If the customer is requesting copies for the purpose of making a new work, then the copyright owner's permission is not required. If the customer is requesting copies for their own use, then the copyright owner's permission is required.





## HOW WELL DO YOU KNOW THE COPYING POLICY

### TRAINING SELF-TEST ANSWER KEY

For Questions 1, 2, 3, 4, 5, 6, 7, 8 and 9:

Explain the Kinko's Copying Policy on copyrighted works to the customer and ask the customer for written permission from the copyright holder, (i.e., photographer, architect, publisher, artist, etc.). If the customer does not have written permission present the customer with the Kinko's Copying Brochure and direct the customer's attention to the Copyright Permission Request Form, ask the customer to complete it. Offer to fax it to the copyright holder free of charge. Once the customer has obtained written permission to reproduce the item in the manner requested, complete the jobs, and put a copy of the permission. If the copyright holder is unknown to the customer and there is no indication on the copyrighted work who the copyright owner is, have the customer complete and sign the release form.

In addition:

- 1 & 6. Explain to the customer that since the photographs appear to be professionally prepared there is reason to question who the photographer is and request written permission.
2. Verify the customer's identity as an employee, such as requesting a business card. If there is a written permission on file from the architect firm and the permission includes copies for their employees complete the job.
4. Explain to the customer that making copies from second generations would result in a lesser quality copy and suggest a better quality copy would be made with an original.
5. Verify the identity of the customer and indicate the form of identification checked on the Copyright Permission Request Form for the text. The graphics require written permission by the copyright holder.
7. Provide the customer with the Release Form to complete and sign, then provide the customer the requested service.
8. Let the customer know that we would be able to color copy the entire photograph in its original form, however, modifying the copy to include only the painting would be considered copying the painting itself. Since paintings are copyrighted works the copyright holder has the exclusive right to copy.
9. Since the designs of the postage stamps are copyrighted by the United States Postal Service, explain to the customer that we would be able to color copy and enlarge the postage stamp with the written permission from the Postal Service.



10. Explain to the customer that identifications can only be copied in black and white to avoid counterfeiting.
11. There are two separate situations; items of monetary value and items that provide identification. Explain to the customer that color copies of items with monetary value, such as traveler's checks, and stock certificates are illegal and can only be copied in black and white. I would refer to the Copying Brochure section on restricted materials and explain that these items must also be reduced to at least 75% or enlarged to at least 150% of the original size. Offer black and white copy service of the birth certificate as well since it is a form of identification.
12. If the company itself is the copyright holder, copyright permission is not required. If the copyright holder is other than the customer, copyright permission is required.
13. The food itself is not copyrighted but the name Life Saver is a trademark, and permission to use the trademark name or reproduce it requires permission from the trademark owner. Since the trademark is embossed on the candy permission from the trademark owner needed.

|      |                                   |              |
|------|-----------------------------------|--------------|
| A.A. | Read Academic Publishing          | 800-321-6170 |
| AAA  | UPC Committee                     | 714-435-3570 |
|      | US Copyright Office               | 202-507-5000 |
|      | US Postal Service                 | 202-268-6576 |
|      | US Treasury Department            | 202-874-3880 |
| AAA  | Washington Publishing EPI Support | 800-334-4912 |

### Legend

- A Library Works Licensing
- A.A. Database Publisher Directories
- AAA Provides guidelines for printing checks
- BA Represents a large number of professional photographers
- BB Provides guidelines to printing checks & other banking
- BCC Provides guidelines for printing UPC Bar Codes
- BB Represents a large number of publishers
- M Music Copyright Society
- AA Represents architects





## Resource Telephone List

|     |                                         |              |
|-----|-----------------------------------------|--------------|
| ●●  | American Banking Association            | 202-663-7559 |
| ✱✱  | American Institute of Architects        | 202-626-7300 |
| ✱   | ASCAP                                   | 800-445-6138 |
| ●✱  | Association of American Publishers      | 202-255-0200 |
| ✱   | BMI                                     | 800-669-4264 |
| ▲   | Copyright Clearance Center              | 508-707-3000 |
| ●   | Professional Photographer's Association | 800-786-6277 |
| ▲▲  | Reed Reference Publishing               | 800-521-8110 |
| ●●● | UPC Committee                           | 513-435-3870 |
|     | US Copyright Office                     | 202-707-3000 |
|     | US Postal Service                       | 202-268-6576 |
|     | US Treasury Department                  | 202-874-8880 |
| ▲▲▲ | Washington Publishing EPI Support       | 800-334-4912 |

### Legend

- ▲ Literary Works Licensing
- ▲▲ Resource Publisher Directories
- ▲▲▲ Provides guidelines for printing checks
- Represents a large number of professional photographers
- Provides guidelines to printing checks & other banking
- Provides guidelines for printing UPC Bar Codes
- ✱ Represents a large number of publishers
- ✱ Music Copyright license
- ✱✱ Represents architects









# 21

Reproduction of  
Copyrighted Works  
by Educators  
and Librarians



COPY COPY COPY COPY COPY COPY

1. Copy the text of the work.
2. Copy the text of the work.
3. Copy the text of the work.
4. Copy the text of the work.

IN CASE OF PROBLEMS CALL

25¢

READY TO COPY

01













# Reproduction of Copyrighted Works by Educators and Librarians

Many educators and librarians ask about the fair use and photocopying provisions of the copyright law. The Copyright Office cannot give legal advice or offer opinions on what is permitted or prohibited. However, we have published in this circular basic information on some of the most important legislative provisions and other documents dealing with reproduction by librarians and educators.

Also available is the 1983 Report of the Register of Copyrights on Library Reproduction of Copyrighted Works (17 U.S.C. 108). The Report and seven appendixes can be purchased in microfiche or paper copies by written request from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161 or by calling the Sales Desk at (703) 487-4650. When ordering, please include the following NTIS Accession Numbers: PB83 148239, Entire Set; PB83 148247, Report Only; PB83 148254, Appendix I (King Report); PB83 148262, Appendix II (Chicago Hearing and Written Comments); PB83 148270, Appendix III (Houston Hearing and Written Comments); PB83 148288, Appendix IV (Washington Hearing and Written Comments); PB83 148296, Appendix V (Anaheim Hearing and Written Comments); PB83 148304, Appendix VI (New York Hearing and Written Comments); and PB83 148312, Appendix VII (Final Written Comments).

The 1988 5-year Report of the Register of Copyrights on Library Reproduction of Copyrighted Works is available through the Government Printing Office. Copies can be purchased by calling the sales desk at (202) 783-3238. The appropriate stock number is s:n 030-002-00162-4.



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## A. INTRODUCTORY NOTE

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### The Subjects Covered in This Booklet

The documentary materials collected in this booklet deal with reproduction of copyrighted works by educators, librarians, and archivists for a variety of uses, including:

- Reproduction for teaching in educational institutions at all levels; and
- Reproduction by libraries and archives for purposes of study, research, interlibrary exchanges, and archival preservation.

The documents reprinted here are limited to materials dealing with **reproduction**. Under the copyright law, reproduction can take either of two forms:

- The making of **copies**: by photocopying, making microform reproductions, videotaping, or any other method of duplicating visually-perceptible material; and
- The making of **phonorecords**: by duplicating sound recordings, taping off the air, or any other method of recapturing sounds.

The copyright law also contains various provisions dealing with importations, performances, and displays of copyrighted works for educational and other noncommercial purposes, but they are outside the scope of this booklet. You can obtain a copy of the statute and information about specific provisions by writing to the Copyright Office, Library of Congress, Washington, D.C. 20559.

### A Note on the Documents Reprinted

The documentary materials in this booklet are reprints or excerpts from six sources:

1. **The Copyright Act of October 19, 1976.** This is the new copyright law of the United States, effective January 1, 1978 (title 17 of the *United States Code*, Public Law 94-553, 90 Stat. 2541).
2. **The Senate Report.** This is the 1975 report of the Senate Judiciary Committee on S. 22, the Senate version of the bill that became the Copyright Act.

of 1976 (S. Rep. No. 94-473, 94th Cong., 1st Sess., November 20 (legislative day November 18, 1975).

3. **The House Report.** This is the 1976 report of the House of Representatives Judiciary Committee on the House amendments to the bill that became the Copyright Act of 1976 (H.R. Rep. No. 94-1476, 94th Cong., 2d Sess., September 3, 1976).

4. **The Conference Report.** This is the 1976 report of the "committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 22) for the general revision of the Copyright Law" (H.R. Rep. No. 94-1733, 94th Cong., 2d Sess., September 29, 1976).

5. **The Congressional Debates.** This booklet contains excerpts from the *Congressional Record* of September 22, 1976, reflecting statements on the floor of Congress at the time the bill was passed by the House of Representatives (122 *CONG. REC.* H 10874-76 (daily edition, September 22, 1976).

6. **Copyright Office Regulations.** These are regulations issued by the Copyright Office under section 108 dealing with warnings of copyright for use by libraries and archives (37 *Code of Federal Regulations* §201.14).

Items 2 and 3 on this list—the 1975 Senate Report and the 1976 House Report—present special problems. On many points the language of these two reports is identical or closely similar. However, the two reports were written at different times, by committees of different Houses of Congress, on somewhat different bills. As a result, the discussions on some provisions of the bills vary widely, and on certain points they disagree.

The disagreements between the Senate and House versions of the bill itself were, of course, resolved when the Act of 1976 was finally passed. However, many of the disagreements as to matters of interpretation between statements in the 1975 Senate Report and in the 1976 House Report were left partly or wholly unresolved. It is therefore difficult, in compiling a booklet such as this, to decide in some cases what to include and what to leave out.





The House Report was written later than the Senate Report, and in many cases it adopted the language of the Senate Report, updating it and conforming it to the version of the bill that was finally enacted into law. Thus, where the differences between the two Reports are relatively minor, or where the discussion in the House Report appears to have superseded the discussion of the same point in the Senate Report, we have used the House Report as the source of our documentation. In other cases we have included excerpts from both discussions in an effort to present the legislative history as fully and fairly as possible. Anyone making a thorough study of the Act of 1976 as it affects librarians and educators should not, of course, rely exclusively on the excerpts reprinted here, but should go back to the primary documentary sources.

## B. EXCLUSIVE RIGHTS IN COPYRIGHTED WORKS

### 1. Text of Section 106

The following is a reprint of the entire text of section 106 of title 17, *United States Code*.

#### § 106. Exclusive rights in copyrighted works

Subject to sections 107 through 118, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly; and
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly.

### 2. Excerpts From House Report on Section 106

The following excerpts are reprinted from the House Report on the new copyright law (H.R. Rep. No. 94-1476, pages 61-62). The text of the corresponding Senate Report (S. Rep. No. 94-473, pages 57-58) is substantially the same.

#### SECTION 106. EXCLUSIVE RIGHTS IN COPYRIGHTED WORKS

##### *General scope of copyright*

The five fundamental rights that the bill gives to copyright owners—the exclusive rights of reproduction, adaptation, publication, performance, and display—are stated generally in section 106. These exclusive rights, which comprise the so-called “bundle of rights” that is a copyright, are cumulative and may overlap in some cases. Each of the five enumerated rights may be subdivided indefinitely and, as discussed below in connection with section 201, each subdivision of an exclusive right may be owned and enforced separately.

The approach of the bill is to set forth the copyright owner's exclusive rights in broad terms in section 106, and then to provide various limitations, qualifications, or exemptions in the 12 sections that follow. Thus, everything in section 106 is made “subject to sections 107 through 118,” and must be read in conjunction with those provisions.

\* \* \*

##### *Rights of reproduction, adaptation, and publication*

The first three clauses of section 106, which cover all rights under a copyright except those of performance and display, extend to every kind of copyrighted work. The exclusive rights encompassed by these clauses, though closely related, are independent; they can generally be characterized as rights of copying, recording, adaptation, and publishing. A single act of infringement may violate all of these rights at once, as where a publisher reproduces, adapts, and sells copies of a person's copyrighted work as part of a publishing venture. Infringement takes place when any one of the rights is violated: where, for example, a printer reproduces copies without selling them or a retailer sells copies without having anything to do with their reproduction. The references to “copies or phonorecords,” although in the plural, are intended here and throughout the bill to include the singular (1 U.S.C. § 1).

*Reproduction.*—Read together with the relevant definitions in section 101, the right “to reproduce the copyrighted work in copies or phonorecords” means the right to produce a material object in which the work is duplicated, transcribed, imitated, or simulated in a fixed





form from which it can be "perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device." As under the present law, a copyrighted work would be infringed by reproducing it in whole or in any substantial part, and by duplicating it exactly or by imitation or simulation. Wide departures or variations from the copyrighted work would still be an infringement as long as the author's "expression" rather than merely the author's "ideas" are taken. An exception to this general principle, applicable to the reproduction of copyrighted sound recordings, is specified in section 114.

"Reproduction" under clause (1) of section 106 is to be distinguished from "display" under clause (5). For a work to be "reproduced," its fixation in tangible form must be "sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration." Thus, the showing of images on a screen or tube would not be a violation of clause (1), although it might come within the scope of clause (5).

## C. FAIR USE

### 1. Text of Section 107

The following is a reprint of the entire text of section 107 of title 17, *United States Code*.

#### § 107. Limitations on exclusive rights: Fair use

Notwithstanding the provisions of section 106, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

### 2. Excerpts From House Report on Section 107

The following excerpts are reprinted from the House Report on the new copyright law (H.R. Rep. No. 94-1476, pages 65-74). The discussion of section 107 appears at pages 61-67 of the Senate Report (S. Rep. No. 94-473). The text of this section of the Senate Report is not reprinted in this booklet, but similarities and differences between the House and Senate Reports on particular points will be noted below.

#### a. House Report: Introductory Discussion on Section 107

The first two paragraphs in this portion of the House Report are closely similar to the Senate Report. The remainder of the passage differs substantially in the two Reports.

#### SECTION 107. FAIR USE

##### *General background of the problem*

The judicial doctrine of fair use, one of the most important and well-established limitations on the exclusive right of copyright owners, would be given express statutory recognition for the first time in section 107. The claim that a defendant's acts constituted a fair use rather than an infringement has been raised as a defense in innumerable copyright actions over the years, and there is ample case law recognizing the existence of the doctrine and applying it. The examples enumerated at page 24 of the Register's 1961 Report, while by no means exhaustive, give some idea of the sort of activities the courts might regard as fair use under the circumstances: "quotation of excerpts in a review or criticism for purposes of illustration or comment; quotation of short passages in a scholarly or technical work, for illustration or clarification of the author's observations; use in a parody of some of the content of the work parodied; summary of an address or article, with brief quotations, in a news report; reproduction by a library of a portion of a work to replace part of a damaged copy; reproduction by a teacher or student of a small part of a work to illustrate a lesson; reproduction of a work in legislative or judicial proceedings or reports; incidental and fortuitous reproduction, in a newsreel or broadcast, of a work located in the scene of an event being reported."

Although the courts have considered and ruled upon the fair use doctrine over and over again, no real definition of the concept has ever emerged. Indeed, since the doctrine is an equitable rule of reason, no generally applicable definition is possible, and each case raising the question must be decided on its own facts. On the other hand, the courts have evolved a set of criteria which, though in no case definitive or determinative, provide





some gauge for balancing the equities. These criteria have been stated in various ways, but essentially they can all be reduced to the four standards which have been adopted in section 107: "(1) the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work."

These criteria are relevant in determining whether the basic doctrine of fair use, as stated in the first sentence of section 107, applies in a particular case: "Notwithstanding the provisions of section 106, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright."

The specific wording of section 107 as it now stands is the result of a process of accretion, resulting from the long controversy over the related problems of fair use and the reproduction (mostly by photocopying) of copyrighted material for educational and scholarly purposes. For example, the reference to fair use "by reproduction in copies or phonorecords or by any other means" is mainly intended to make clear that the doctrine has as much application to photocopying and taping as to older forms of use; it is not intended to give these kinds of reproduction any special status under the fair use provision or to sanction any reproduction beyond the normal and reasonable limits of fair use. Similarly, the newly-added reference to "multiple copies for classroom use" is a recognition that, under the proper circumstances of fairness, the doctrine can be applied to reproductions of multiple copies for the members of a class.

The Committee has amended the first of the criteria to be considered—"the purpose and character of the use"—to state explicitly that this factor includes a consideration of "whether such use is of a commercial nature or is for non-profit educational purposes." This amendment is not intended to be interpreted as any sort of not-for-profit limitation on educational uses of copyrighted works. It is an express recognition that, as under the present law, the commercial or non-profit character of an activity, while not conclusive with respect to fair use, can and should be weighed along with other factors in fair use decisions.

#### *General intention behind the provision*

The statement of the fair use doctrine in section 107 offers some guidance to users in determining when the principles of the doctrine apply. However, the endless

variety of situations and combinations of circumstances that can rise in particular cases precludes the formulation of exact rules in the statute. The bill endorses the purpose and general scope of the judicial doctrine of fair use, but there is no disposition to freeze the doctrine in the statute, especially during a period of rapid technological change. Beyond a very broad statutory explanation of what fair use is and some of the criteria applicable to it, the courts must be free to adapt the doctrine to particular situations on a case-by-case basis. Section 107 is intended to restate the present judicial doctrine of fair use, not to change, narrow, or enlarge it in any way.

### **b. House Report: Statement of Intention as to Classroom Reproduction**

The House Report differs substantially from the Senate Report on this point.

### **(i) Introductory Statement**

#### *Intention as to classroom reproduction*

Although the works and uses to which the doctrine of fair use is applicable are as broad as the copyright law itself, most of the discussion of section 107 has centered around questions of classroom reproduction, particularly photocopying. The arguments on the question are summarized at pp. 30–31 of this Committee's 1967 report (H.R. Rep. No. 83, 90th Cong., 1st Sess.), and have not changed materially in the intervening years.

The Committee also adheres to its earlier conclusion, that "a specific exemption freeing certain reproductions of copyrighted works for educational and scholarly purposes from copyright control is not justified." At the same time the Committee recognizes, as it did in 1967, that there is a "need for greater certainty and protection for teachers." In an effort to meet this need the Committee has not only adopted further amendments to section 107, but has also amended section 504(c) to provide innocent teachers and other non-profit users of copyrighted material with broad insulation against unwarranted liability for infringement. The latter amendments are discussed below in connection with Chapter 5 of the bill.

In 1967 the Committee also sought to approach this problem by including, in its report, a very thorough discussion of "the considerations lying behind the four criteria listed in the amended section 107, in the context of typical classroom situations arising today." This discussion appeared on pp. 32–35 of the 1967 report, and with some changes has been retained in the Senate report on S. 22 (S. Rep. No. 94–473, pp. 63–65). The Committee has reviewed this discussion, and considers that it





still has value as an analysis of various aspects of the problem.

At the Judiciary Subcommittee hearings in June 1975, Chairman Kastenmeier and other members urged the parties to meet together independently in an effort to achieve a meeting of the minds as to permissible educational uses of copyrighted material. The response to these suggestions was positive, and a number of meetings of three groups, dealing respectively with classroom reproduction of printed material, music, and audio-visual material, were held beginning in September 1975.

## **(ii) Guidelines With Respect to Books and Periodicals**

In a joint letter to Chairman Kastenmeier, dated March 19, 1976, the representatives of the Ad Hoc Committee of Educational Institutions and Organizations on Copyright Law Revision, and of the Authors League of America, Inc., and the Association of American Publishers, Inc., stated:

You may remember that in our letter of March 8, 1976 we told you that the negotiating teams representing authors and publishers and the Ad Hoc Group had reached tentative agreement on guidelines to insert in the Committee Report covering educational copying from books and periodicals under Section 107 of H.R. 2223 and S. 22, and that as part of that tentative agreement each side would accept the amendments to Sections 107 and 504 which were adopted by your Subcommittee on March 3, 1976.

We are now happy to tell you that the agreement has been approved by the principals and we enclose a copy herewith. We had originally intended to translate the agreement into language suitable for inclusion in the legislative report dealing with Section 107, but we have since been advised by committee staff that this will not be necessary.

As stated above, the agreement refers only to copying from books and periodicals, and it is not intended to apply to musical or audiovisual works.

The full text of the agreement is as follows:

### **AGREEMENT ON GUIDELINES FOR CLASSROOM COPYING IN NOT-FOR-PROFIT EDUCATIONAL INSTITUTIONS WITH RESPECT TO BOOKS AND PERIODICALS**

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational fair use under Section 107 of H.R. 2223. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain

types of copying permitted under these guidelines may not be permissible in the future; and conversely that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107 of the Copyright Revision Bill. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

## **GUIDELINES**

### **I. Single Copying for Teachers**

A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:

- A. A chapter from a book;
- B. An article from a periodical or newspaper;
- C. A short story, short essay or short poem, whether or not from a collective work;
- D. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper;

### **II. Multiple Copies for Classroom Use**

Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion; *provided that*:

- A. The copying meets the tests of brevity and spontaneity as defined below; *and*,
- B. Meets the cumulative effect test as defined below; *and*,
- C. Each copy includes a notice of copyright

#### **Definitions**

##### **Brevity**

(i) Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages or, (b) from a longer poem, an excerpt of not more than 250 words.

(ii) Prose: (a) Either a complete article, story or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words.

[Each of the numerical limits stated in "i" and "ii" above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.]

(iii) Illustration: One chart, graph, diagram,





drawing, cartoon or picture per book or per periodical issue.

(iv) "Special" works: Certain works in poetry, prose or in "poetic prose" which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph "ii" above notwithstanding such "special works" may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof, may be reproduced.

#### *Spontaneity*

(i) The copying is at the instance and inspiration of the individual teacher, and

(ii) The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

#### *Cumulative Effect*

(i) The copying of the material is for only one course in the school in which the copies are made.

(ii) Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.

(iii) There shall not be more than nine instances of such multiple copying for one course during one class term.

[The limitations stated in "ii" and "iii" above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.]

### **III. Prohibitions as to I and II Above**

Notwithstanding any of the above, the following shall be prohibited:

(A) Copying shall not be used to create or to replace or substitute for anthologies, compilations or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or reproduced and used separately.

(B) There shall be no copying of or from works intended to be "consumable" in the course of study or of teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.

(C) Copying shall not:

(a) substitute for the purchase of books, publishers' reprints or periodicals;

(b) be directed by higher authority;

(c) be repeated with respect to the same item by the same teacher from term to term.

(D) No charge shall be made to the student beyond the actual cost of the photocopying.

Agreed MARCH 19, 1976.

Ad Hoc Committee on Copyright Law Revision:

By SHELDON ELLIOTT STEINBACH.

Author-Publisher Group:

Authors League of America:

By IRWIN KARP, *Counsel*.

Association of American Publishers, Inc.:

By ALEXANDER C. HOFFMAN,  
*Chairman, Copyright Committee.*

### **(iii) Guidelines With Respect to Music**

In a joint letter dated April 30, 1976, representatives of the Music Publishers' Association of the United States, Inc., the National Music Publishers' Association, Inc., the Music Teachers National Association, the Music Educators National Conference, the National Association of Schools of Music, and the Ad Hoc Committee on Copyright Law Revision, wrote to Chairman Kasteneier as follows:

During the hearings on H.R. 2223 in June 1975, you and several of your subcommittee members suggested that concerned groups should work together in developing guidelines which would be helpful to clarify Section 107 of the bill.

Representatives of music educators and music publishers delayed their meetings until guidelines had been developed relative to books and periodicals. Shortly after that work was completed and those guidelines were forwarded to your subcommittee, representatives of the undersigned music organizations met together with representatives of the Ad Hoc Committee on Copyright Law Revision to draft guidelines relative to music.

We are very pleased to inform you that the discussions thus have been fruitful on the guidelines which have been developed. Since private music teachers are an important factor in music education, due consideration has been given to the concerns of that group.

We trust that this will be helpful in the report on the bill to clarify Fair Use as it applies to music.

The text of the guidelines accompanying this letter is as follows:

#### **GUIDELINES FOR EDUCATIONAL USES OF MUSIC**

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational fair use under Section 107 of HR 2223. The parties agree that the conditions determining the extent of permissible





copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future, and conversely that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107 of the Copyright Revision Bill. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

#### A. Permissible Uses

1. Emergency copying to replace purchased copies which for any reason are not available for an imminent performance provided purchased replacement copies shall be substituted in due course.

2. For academic purposes other than performance, single or multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole which would constitute a performable unit such as a section\*, movement or aria, but in no case more than 10 percent of the whole work. The number of copies shall not exceed one copy per pupil.\*\*

3. Printed copies which have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added if none exist.

4. A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.

5. A single copy of a sound recording (such as a tape, disc or cassette) of copyrighted music may be made from sound recordings owned by an educational institution or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. (This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.)

\*Corrected from *Congressional Record*.

\*\*Editor's Note: As reprinted in the House Report, subsection A.2 of the Music Guidelines had consisted of two separate paragraphs, one dealing with multiple copies and a second dealing with single copies. In his introductory remarks during the House debates on S.22, the Chairman of the House Judiciary Subcommittee, Mr. Kastenmeier, announced that "the report, as printed, does not reflect a subsequent change in the joint guidelines which was described in a subsequent letter to me from a representative of [the signatory organizations]," and provided the revised text of subsection A.2. (122 CONG. REC. H 10875, Sept. 22, 1976). The text reprinted here is the revised text.

#### B. Prohibitions

1. Copying to create or replace or substitute for anthologies, compilations or collective works.

2. Copying of or from works intended to be "consumable" in the course of study or of teaching such as workbooks, exercises, standardized tests and answer sheets and like material.

3. Copying for the purpose of performance, except as in A (1) above.

4. Copying for the purpose of substituting for the purchase of music, except as in A(1) and A(2) above.

5. Copying without inclusion of the copyright notice which appears on the printed copy.

#### (iv) Discussion of Guidelines

The Committee appreciates and commends the efforts and the cooperative and reasonable spirit of the parties who achieved the agreed guidelines on books and periodicals and on music. Representatives of the American Association of University Professors and of the Association of American Law Schools have written to the Committee strongly criticizing the guidelines, particularly with respect to multiple copying, as being too restrictive with respect to classroom situations at the university and graduate level. However, the Committee notes that the Ad Hoc group did include representatives of higher education, that the stated "purpose of the . . . guidelines is to state the minimum and not the maximum standards of educational fair use" and that the agreement acknowledges "there may be instances in which copying which does not fall within the guidelines . . . may nonetheless be permitted under the criteria of fair use."

The Committee believes the guidelines are a reasonable interpretation of the minimum standards of fair use. Teachers will know that copying within the guidelines is fair use. Thus, the guidelines serve the purpose of fulfilling the need for greater certainty and protection for teachers. The Committee expresses the hope that if there are areas where standards other than these guidelines may be appropriate, the parties will continue their efforts to provide additional specific guidelines in the same spirit of good will and give and take that has marked the discussion of this subject in recent months.

#### c. House Report: Additional Excerpts

Under the heading "Reproduction and uses for other purposes," the House Report, at pages 72-74, parallels much of the material appearing at pages 65-67 of the Senate Report under the same heading, but with some differences.





The concentrated attention given the fair use provision in the context of classroom teaching activities should not obscure its application in other areas. It must be emphasized again that the same general standards of fair use are applicable to all kinds of uses of copyrighted material, although the relative weight to be given them will differ from case to case.

\* \* \*

A problem of particular urgency is that of preserving for posterity prints of motion pictures made before 1942. Aside from the deplorable fact that in a great many cases the only existing copy of a film has been deliberately destroyed, those that remain are in immediate danger of disintegration; they were printed on film stock with a nitrate base that will inevitably decompose in time. The efforts of the Library of Congress, the American Film Institute, and other organizations to rescue and preserve this irreplaceable contribution to our cultural life are to be applauded, and the making of duplicate copies for purposes of archival preservation certainly falls within the scope of "fair use."

\* \* \*

During the consideration of the revision bill in the 94th Congress it was proposed that independent newsletters, as distinguished from house organs and publicity or advertising publications, be given separate treatment. It is argued that newsletters are particularly vulnerable to mass photocopying, and that most newsletters have fairly modest circulations. Whether the copying of portions of a newsletter is an act of infringement or a fair use will necessarily turn on the facts of the individual case. However, as a general principle, it seems clear that the scope of the fair use doctrine should be considerably narrower in the case of newsletters than in that of either mass-circulation periodicals or scientific journals. The commercial nature of the user is a significant factor in such cases: Copying by a profit-making user of even a small portion of a newsletter may have a significant impact on the commercial market for the work.

The Committee has examined the use of excerpts from copyrighted works in the art work of calligraphers. The committee believes that a single copy reproduction of an excerpt from a copyrighted work by a calligrapher for a single client does not represent an infringement of copyright. Likewise, a single reproduction of excerpts from a copyrighted work by a student calligrapher or teacher in a learning situation would be a fair use of the copyrighted work.

The Register of Copyrights has recommended that the committee report describe the relationship between this section and the provisions of section 108 relating to reproduction by libraries and archives. The doctrine of fair use applies to library photocopying, and nothing contained in section 108 "in any way affects the right of fair

use." No provision of section 108 is intended to take away any rights existing under the fair use doctrine. To the contrary, section 108 authorizes certain photocopying practices which may not qualify as a fair use.

The criteria of fair use are necessarily set forth in general terms. In the application of the criteria of fair use to specific photocopying practices of libraries, it is the intent of this legislation to provide an appropriate balancing of the rights of creators, and the needs of users.

### 3. Excerpts From Conference Report on Section 107

The following excerpt is reprinted from the Report of the Conference Committee on the new copyright law (H.R. Rep. No. 94-1733, page 70).

#### FAIR USE

##### *Senate bill*

The Senate bill, in section 107, embodied express statutory recognition of the judicial doctrine that the fair use of a copyrighted work is not an infringement of copyright. It set forth the fair use doctrine, including four criteria for determining its applicability in particular cases, in general terms.

##### *House bill*

The House bill amended section 107 in two respects: in the general statement of the fair use doctrine it added a specific reference to multiple copies for classroom use, and it amplified the statement of the first of the criteria to be used in judging fair use (the purpose and character of the use) by referring to the commercial nature or non-profit educational purpose of the use.

##### *Conference substitute*

The conference substitute adopts the House amendments. The conferees accept as part of their understanding of fair use the Guidelines for Classroom Copying in Not-for-Profit Educational Institutions with respect to books and periodicals appearing at pp. 68-70 of the House Report (H. Rept. No. 94-1476, as corrected at p. H 10727 of the Congressional Record for September 21, 1976), and for educational uses of music appearing at pp. 70-71 of the House report, as amended in the statement appearing at p. H 10875 of the Congressional Record of September 22, 1976. The conferees also endorse the statement concerning the meaning of the word "teacher" in the guidelines for books and periodicals, and the application of fair use in the case of use of television programs within the confines of a nonprofit educational institution for the deaf and hearing impaired, both of which appear on p. H 10875 of the Congressional Record of September 22, 1976.





#### 4. Excerpts From Congressional Debates

The following excerpts are reprinted from the *Congressional Record* of September 22, 1976, including statements by Mr. Kastenmeier (Chairman of the House Judiciary Subcommittee responsible for the bill) on the floor of the House of Representatives.

MR. KASTENMEIER. \* \* \*

Mr. Chairman, before concluding my remarks I would like to discuss several questions which have been raised concerning the meaning of several provisions of S. 22 as reported by the House Judiciary Committee and of statements in the committee's report, No. 94-1476.

\* \* \*

Another question involves the reference to "teacher" in the "Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions" reproduced at pages 68-70 of the committee's report No. 94-1476 in connection with section 107. It has been pointed out that, in planning his or her teaching on a day-to-day basis in a variety of educational situations, an individual teacher will commonly consult with instructional specialists on the staff of the school, such as reading specialists, curriculum specialists, audiovisual directors, guidance counselors, and the like. As long as the copying meets all of the other criteria laid out in the guidelines, including the requirements for spontaneity and the prohibition against the copying being directed by higher authority, the committee regards the concept of "teacher" as broad enough to include instructional specialists working in consultation with actual instructors.

Also in consultation with section 107, the committee's attention has been directed to the unique educational needs and problems of the approximately 50,000 deaf and hearing-impaired students in the United States, and the inadequacy of both public and commercial television to serve their educational needs. It has been suggested that, as long as clear-cut constraints are imposed and enforced, the doctrine of fair use is broad enough to permit the making of an off-the-air fixation of a television program within a nonprofit educational institution for the deaf and hearing impaired, the reproduction of a master and a work copy of a captioned version of the original fixation, and the performance of the program from the work copy within the confines of the institution. In identifying the constraints that would have to be imposed within an institution in order for these activities to be considered as fair use, it has been suggested that the purpose of the use would have to be noncommercial in every respect, and educational in the sense that it serves as part of a deaf or hearing-impaired student's learning environment within the institution, and that the institution would have to insure that the master and work copy

would remain in the hands of a limited number of authorized personnel within the institution, would be responsible for assuring against its unauthorized reproduction or distribution, or its performance or retention for other than educational purposes within the institution. Work copies of captioned programs could be shared among institutions for the deaf abiding by the constraints specified. Assuming that these constraints are both imposed and enforced, and that no other factors intervene to render the use unfair, the committee believes that the activities described could reasonably be considered fair use under section 107.

\* \* \*

Mr. Chairman, because of the complexity of this bill and the delicate balances which it creates among competing economic interests, the committee will resist extensive amendment of this bill. On behalf of the committee I would urge all of my colleagues to vote favorably on S. 22.

MR. SKUBITZ. Mr. Chairman, will the gentleman yield?

MR. KASTENMEIER. I am happy to yield to my friend, the gentleman from Kansas.

MR. SKUBITZ. Mr. Chairman, I thank my friend, the gentleman from Wisconsin, for yielding.

Mr. Chairman, I have received a great deal of mail from the schoolteachers in my district who are particularly concerned about section 107—fair use—the fair use of copyrighted material. Having been a former schoolteacher myself, I believe they make a good point and there is a sincere fear on their part that, because of the vagueness or ambiguity in the bill's treatment of the doctrine of fair use, they may subject themselves to liability for an unintentional infringement of copyright when all they were trying to do was the job for which they were trained.

The vast majority of teachers in this country would not knowingly infringe upon a person's copyright, but, as any teacher can appreciate, there are times when information is needed and is available, but may be literally impossible to locate the right person to approve the use of that material and the purchase of such would not be feasible and, in the meantime, the teacher may have lost that "teachable moment."

Did the subcommittee take these problems into consideration and did they do anything to try and help the teachers to better understand section 107?

Have the teachers been protected by this section 107?

MR. KASTENMEIER. Mr. Chairman, in response to the gentleman's question and his observations preceding the question, I would say, indeed they have.

Over the years this has been one of the most difficult





questions. It is a problem that I believe has been very successfully resolved.

Section 107 on "Fair Use" has of course, restated four standards, and these standards are, namely: The purpose and character of the use of the material; the nature of the copyrighted work; the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and the effect of the use upon the potential market for or value of the copyrighted work.

These are the four "Fair Use" criteria. These alone were not adequate to guide teachers, and I am sure the gentleman from Kansas (Mr. SKUBITZ) understands that as a schoolteacher himself.

Therefore, the educators, the proprietors, and the publishers of educational materials did, at the committee's long insistence, get together. While there were many fruitless meetings, they did finally get together.

Mr. Chairman, I will draw the gentleman's attention to pages 65 through 74 in the report which contain extensive guidelines for teachers. I am very happy to say that there was an agreement reached between teachers and publishers of educational material, and that today the National Education Association supports the bill, and it has, in fact, sent a telegram which at the appropriate time I will make a part of the RECORD and which requests support for the bill in its present form, believing that it has satisfied the needs of the teachers:

**NATIONAL EDUCATION ASSOCIATION,**

*Washington, D.C., September 10, 1976.*

National Education Association urgently requests your support of the Copyright Revision bill, H.R. 2223, as reported by the Judiciary Committee. This compromise effort represents a major breakthrough in establishing equitable legal guidelines for the use of copyright materials for instructional and research purposes. We ask your support of the committee bill without amendments.

**JAMES W. GREEN,**

*Assistant Director for Legislation.*

Mr. SKUBITZ. Mr. Chairman, if the gentleman will yield further, then the NEA is satisfied with the language in the bill as it now stands; is that correct?

Mr. KASTENMEIER. The gentleman is correct.

Mr. SKUBITZ. Mr. Chairman, I thank the gentleman.

## **D. REPRODUCTION BY LIBRARIES AND ARCHIVES**

### **1. Text of Section 108**

The following is a reprint of the entire text of section 108 of title 17, *United States Code*.

### **§ 108. Limitations on exclusive rights: Reproduction by libraries and archives**

(a) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than one copy or phonorecord of a work, or to distribute such copy or phonorecord, under the conditions specified by this section, if—

(1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;

(2) the collections of the library or archives are (i) open to the public, or (ii) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field; and

(3) the reproduction or distribution of the work includes a notice of copyright.

(b) The rights of reproduction and distribution under this section apply to a copy or phonorecord of an unpublished work duplicated in facsimile form solely for purposes of preservation and security or for deposit for research use in another library or archives of the type described by clause (2) of subsection (a), if the copy or phonorecord reproduced is currently in the collections of the library or archives.

(c) The right of reproduction under this section applies to a copy or phonorecord of a published work duplicated in facsimile form solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, or stolen, if the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price.

(d) The rights of reproduction and distribution under this section apply to a copy, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, of no more than one article or other contribution to a copyrighted collection or periodical issue, or to a copy or phonorecord of a small part of any other copyrighted work, if—

(1) the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and

(2) the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

(e) The rights of reproduction and distribution under this section apply to the entire work, or to a substantial part of it, made from the collection of a library or ar-





archives where the user makes his or her request or from that of another library or archives, if the library or archives has first determined, on the basis of a reasonable investigation, that a copy or phonorecord of the copyrighted work cannot be obtained at a fair price, if—

(1) the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and

(2) the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

(f) Nothing in this section—

(1) shall be construed to impose liability for copyright infringement upon a library or archives or its employees for the unsupervised use of reproducing equipment located on its premises: *Provided*, That such equipment displays a notice that the making of a copy may be subject to the copyright law;

(2) excuses a person who uses such reproducing equipment or who requests a copy or phonorecord under subsection (d) from liability for copyright infringement for any such act, or for any later use of such copy or phonorecord, if it exceeds fair use as provided by section 107;

(3) shall be construed to limit the reproduction and distribution by lending of a limited number of copies and excerpts by a library or archives of an audiovisual news program, subject to clauses (1), (2), and (3) of subsection (a); or

(4) in any way affects the right of fair use as provided by section 107, or any contractual obligations assumed at any time by the library or archives when it obtained a copy or phonorecord of a work in its collections.

(g) The rights of reproduction and distribution under this section extend to the isolated and unrelated reproduction or distribution of a single copy or phonorecord of the same material on separate occasions, but do not extend to cases where the library or archives, or its employee—

(1) is aware or has substantial reason to believe that it is engaging in the related or concerted reproduction or distribution of multiple copies or phonorecords of the same material, whether made on one occasion or over a period of time, and whether intended for aggregate use by one or more individuals or for separate use by the individual members of a group; or

(2) engages in the systematic reproduction or distribution of single or multiple copies or phonorecords of material described in subsection (d):

*Provided*, That nothing in this clause prevents a library or archives from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.

(h) The rights of reproduction and distribution under this section do not apply to a musical work, a pictorial, graphic or sculptural work, or a motion picture or other audiovisual work other than an audiovisual work dealing with news, except that no such limitation shall apply with respect to rights granted by subsections (b) and (c), or with respect to pictorial or graphic works published as illustrations, diagrams, or similar adjuncts to works of which copies are reproduced or distributed in accordance with subsections (d) and (e).

(i) Five years from the effective date of this Act, and at five-year intervals thereafter, the Register of Copyrights, after consulting with representatives of authors, book and periodical publishers, and other owners of copyrighted materials, and with representatives of library users and librarians, shall submit to the Congress a report setting forth the extent to which this section has achieved the intended statutory balancing of the rights of creators, and the needs of users. The report should also describe any problems that may have arisen, and present legislative or other recommendations, if warranted.

## 2. Excerpts From Senate Report on Section 108

The following excerpts are reprinted from the 1975 Senate Report on the new copyright law (S. Rep. No. 94-473, pages 67-71). Where the discussions of particular points are generally similar in the two Reports, the passages from the later House Report are reprinted in this booklet. Where the discussion of particular points is substantially different, passages from both Reports are reprinted.

### a. Senate Report: Discussion of Libraries and Archives in Profit-Making Institutions

The limitation of section 108 to reproduction and distribution by libraries and archives "without any purpose of direct or indirect commercial advantage" is intended to preclude a library or archives in a profit-making organization from providing photocopies of copyrighted materials to employees engaged in furtherance of the organization's commercial enterprise, unless such copying qualifies as a fair use, or the organization has obtained the necessary copyright licenses. A commercial organization should purchase the number of copies of a work





that it requires, or obtain the consent of the copyright owner to the making of the photocopies.

## **b. Senate Report: Discussion of Multiple Copies and Systematic Reproduction**

### *Multiple copies and systematic reproduction*

Subsection (g) provides that the rights granted by this section extend only to the "isolated and unrelated reproduction of a single copy", but this section does not authorize the related or concerted reproduction of multiple copies of the same material whether made on one occasion or over a period of time, and whether intended for aggregate use by one individual or for separate use by the individual members of a group. For example, if a college professor instructs his class to read an article from a copyrighted journal, the school library would not be permitted, under subsection (g), to reproduce copies of the article for the members of the class.

Subsection (g) also provides that section 108 does not authorize the systematic reproduction or distribution of copies or phonorecords of articles or other contributions to copyrighted collections or periodicals or of small parts of other copyrighted works whether or not multiple copies are reproduced or distributed. Systematic reproduction or distribution occurs when a library makes copies of such materials available to other libraries or to groups of users under formal or informal arrangements whose purpose or effect is to have the reproducing library serve as their source of such material. Such systematic reproduction and distribution, as distinguished from isolated and unrelated reproduction or distribution, may substitute the copies reproduced by the source library for subscriptions or reprints or other copies which the receiving libraries or users might otherwise have purchased for themselves, from the publisher or the licensed reproducing agencies.

While it is not possible to formulate specific definitions of "systematic copying", the following examples serve to illustrate some of the copying prohibited by subsection (g).

(1) A library with a collection of journals in biology informs other libraries with similar collections that it will maintain and build its own collection and will make copies of articles from these journals available to them and their patrons on request. Accordingly, the other libraries discontinue or refrain from purchasing subscriptions to these journals and fulfill their patrons' requests for articles by obtaining photocopies from the source library.

(2) A research center employing a number of scientists and technicians subscribes to one or two copies of needed periodicals. By reproducing photocopies of articles the center is able to make the material in these periodicals available to its staff in the same manner which otherwise

would have required multiple subscriptions.

(3) Several branches of a library system agree that one branch will subscribe to particular journals in lieu of each branch purchasing its own subscriptions, and the one subscribing branch will reproduce copies of articles from the publication for users of the other branches.

The committee believes that section 108 provides an appropriate statutory balancing of the rights of creators, and the needs of users. However, neither a statute nor legislative history can specify precisely which library photocopying practices constitute the making of "single copies" as distinguished from "systematic reproduction". Isolated single spontaneous requests must be distinguished from "systematic reproduction". The photocopying needs of such operations as multi-county regional systems must be met. The committee therefore recommends that representatives of authors, book and periodical publishers and other owners of copyrighted material meet with the library community to formulate photocopying guidelines to assist library patrons and employees. Concerning library photocopying practices not authorized by this legislation, the committee recommends that workable clearance and licensing procedures be developed.

It is still uncertain how far a library may go under the Copyright Act of 1909 in supplying a photocopy of copyrighted material in its collection. The recent case of *The Williams and Wilkins Company v. The United States* failed to significantly illuminate the application of the fair use doctrine to library photocopying practices. Indeed, the opinion of the Court of Claims said the Court was engaged in "a 'holding operation' in the interim period before Congress enacted its preferred solution."

While the several opinions in the *Wilkins* case have given the Congress little guidance as to the current state of the law on fair use, these opinions provide additional support for the balanced resolution of the photocopying issue adopted by the Senate last year in S. 1361 and preserved in section 108 of this legislation. As the Court of Claims opinion succinctly stated "there is much to be said on all sides."

In adopting these provisions on library photocopying, the committee is aware that through such programs as those of the National Commission on Libraries and Information Science there will be a significant evolution in the functioning and services of libraries. To consider the possible need for changes in copyright law and procedures as a result of new technology, a National Commission on New Technological Uses of Copyrighted Works has been established (Public Law 93-573).





### 3. Excerpts From House Report on Section 108

The following excerpts are reprinted from the House Report on the new copyright law (H.R. Rep. No. 94-1476, pages 74-79). All of the House Report's discussion of section 108 is reprinted here; similarities and differences between the House and Senate Reports on particular points will be noted below.

#### a. House Report: Introductory Statement

This paragraph is substantially the same in the Senate and House Reports.

Notwithstanding the exclusive rights of the owners of copyright, section 108 provides that under certain conditions it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce or distribute not more than one copy or phonorecord of a work, provided (1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage and (2) the collections of the library or archives are open to the public or available not only to researchers affiliated with the library or archives, but also to other persons doing research in a specialized field, and (3) the reproduction or distribution of the work includes a notice of copyright.

#### b. House Report: Discussion of Libraries and Archives in Profit-Making Institutions

The Senate and House Reports differ substantially on this point. The Senate Report's discussion is reprinted at page 17, above.

Under this provision, a purely commercial enterprise could not establish a collection of copyrighted works, call itself a library or archive, and engage in for-profit reproduction and distribution of photocopies. Similarly, it would not be possible for a non-profit institution, by means of contractual arrangements with a commercial copying enterprise, to authorize the enterprise to carry out copying and distribution functions that would be exempt if conducted by the non-profit institution itself.

The reference to "indirect commercial advantage" has raised questions as to the status of photocopying done by or for libraries or archival collections within industrial, profitmaking, or proprietary institutions (such as the research and development departments of chemical, pharmaceutical, automobile, and oil corporations, the library of a proprietary hospital, the collec-

tions owned by a law or medical partnership, etc.).

There is a direct interrelationship between this problem and the prohibitions against "multiple" and "systematic" photocopying in section 108 (g) (1) and (2). Under section 108, a library in a profit-making organization would not be authorized to:

(a) use a single subscription or copy to supply its employees with multiple copies of material relevant to their work; or

(b) use a single subscription or copy to supply its employees, on request, with single copies of material relevant to their work, where the arrangement is "systematic" in the sense of deliberately substituting photocopying for subscription or purchase; or

(c) use "interlibrary loan" arrangements for obtaining photocopies in such aggregate quantities as to substitute for subscriptions or purchase of material needed by employees in their work.

Moreover, a library in a profit-making organization could not evade these obligations by installing reproducing equipment on its premises for unsupervised use by the organization's staff.

Isolated, spontaneous making of single photocopies by a library in a for-profit organization, without any systematic effort to substitute photocopying for subscriptions or purchases, would be covered by section 108, even though the copies are furnished to the employees of the organization for use in their work. Similarly, for-profit libraries could participate in interlibrary arrangements for exchange of photocopies, as long as the reproduction or distribution was not "systematic." These activities, by themselves, would ordinarily not be considered "for direct or indirect commercial advantage," since the "advantage" referred to in this clause must attach to the immediate commercial motivation behind the reproduction or distribution itself, rather than to the ultimate profit-making motivation behind the enterprise in which the library is located. On the other hand, section 108 would not excuse reproduction or distribution if there were a commercial motive behind the actual making or distributing of the copies, if multiple copies were made or distributed, or if the photocopying activities were "systematic" in the sense that their aim was to substitute for subscriptions or purchases.

#### c. House Report: Rights of Reproduction and Distribution Under Section 108

The following paragraphs are closely similar in the Senate and House Reports.

The rights of reproduction and distribution under section 108 apply in the following circumstances:





#### *Archival reproduction*

Subsection (b) authorizes the reproduction and distribution of a copy or phonorecord of an unpublished work duplicated in facsimile form solely for purposes of preservation and security, or for deposit for research use in another library or archives, if the copy or phonorecord reproduced is currently in the collections of the first library or archives. Only unpublished works could be reproduced under this exemption, but the right would extend to any type of work, including photographs, motion pictures and sound recordings. Under this exemption, for example, a repository could make photocopies of manuscripts by microfilm or electrostatic process, but could not reproduce the work in "machine-readable" language for storage in an information system.

#### *Replacement of damaged copy*

Subsection (c) authorizes the reproduction of a published work duplicated in facsimile form solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost or stolen, if the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price. The scope and nature of a reasonable investigation to determine that an unused replacement cannot be obtained will vary according to the circumstances of a particular situation. It will always require recourse to commonly-known trade sources in the United States, and in the normal situation also to the publisher or other copyright owner (if such owner can be located at the address listed in the copyright registration), or an authorized reproducing service.

#### *Articles and small excerpts*

Subsection (d) authorizes the reproduction and distribution of a copy of not more than one article or other contribution to a copyrighted collection or periodical issue, or of a copy or phonorecord of a small part of any other copyrighted work. The copy or phonorecord may be made by the library where the user makes his request or by another library pursuant to an interlibrary loan. It is further required that the copy become the property of the user, that the library or archives have no notice that the copy would be used for any purposes other than private study, scholarship or research, and that the library or archives display prominently at the place where reproduction requests are accepted, and includes in its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

#### *Out-of-print works*

Subsection (e) authorizes the reproduction and distribution of a copy or phonorecord of an entire work under certain circumstances, if it has been established that a copy cannot be obtained at a fair price. The copy may be made by the library where the user makes his request or by another library pursuant to an interlibrary loan. The scope and nature of a reasonable investigation to determine that an unused copy cannot be obtained will vary according to the circumstances of a particular situation. It will always require recourse to commonly-known trade sources in the United States, and in the normal situation also to the publisher or other copyright owner (if the owner can be located at the address listed in the copyright registration), or an authorized reproducing service. It is further required that the copy become the property of the user, that the library or archives have no notice that the copy would be used for any purpose other than private study, scholarship, or research, and that the library or archives display prominently at the place where reproduction requests are accepted, and include on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

### **d. House Report: General Exemptions for Libraries and Archives**

Parts of the following paragraphs are substantially similar in the Senate and House Reports. Differences in the House Report on certain points reflect certain amendments in section 108(f) and elsewhere in the Copyright Act.

#### *General exemptions*

Clause (1) of subsection (f) specifically exempts a library or archives or its employees from liability for the unsupervised use of reproducing equipment located on its premises, provided that the reproducing equipment displays a notice that the making of a copy may be subject to the copyright law. Clause (2) of subsection (f) makes clear that this exemption of the library or archives does not extend to the person using such equipment or requesting such copy if the use exceeds fair use. Insofar as such person is concerned the copy or phonorecord made is not considered "lawfully" made for purposes of sections 109, 110 or other provisions of the title.

Clause (3) provides that nothing in section 108 is intended to limit the reproduction and distribution by lending of a limited number of copies and excerpts of an audiovisual news program. This exemption is intended to apply to the daily newscasts of the national television





networks, which report the major events of the day. It does not apply to documentary (except documentary programs involving news reporting as that term is used in section 107), magazine-format or other public affairs broadcasts dealing with subjects of general interest to the viewing public.

The clause was first added to the revision bill in 1974 by the adoption of an amendment proposed by Senator Baker. It is intended to permit libraries and archives, subject to the general conditions of this section, to make off-the-air videotape recordings of daily network newscasts for limited distribution to scholars and researchers for use in research purposes. As such, it is an adjunct to the American Television and Radio Archive established in Section 113 of the Act which will be the principal repository for television broadcast material, including news broadcasts. The inclusion of language indicating that such material may only be distributed by lending by the library or archive is intended to preclude performance, copying, or sale, whether or not for profit, by the recipient of a copy of a television broadcast taped off-the-air pursuant to this clause.

Clause (4), in addition to asserting that nothing contained in section 108 "affects the right of fair use as provided by section 107," also provides that the right of reproduction granted by this section does not override any contractual arrangements assumed by a library or archives when it obtained a work for its collections. For example, if there is an express contractual prohibition against reproduction for any purpose, this legislation shall not be construed as justifying a violation of the contract. This clause is intended to encompass the situation where an individual makes papers, manuscripts or other works available to a library with the understanding that they will not be reproduced.

It is the intent of this legislation that a subsequent unlawful use by a user of a copy or phonorecord of a work lawfully made by a library, shall not make the library liable for such improper use.

## **e. House Report: Discussion of Multiple Copies and Systematic Reproduction**

The Senate and House Reports differ substantially on this point. The Senate Report's discussion is reprinted at page 17, above.

### *Multiple copies and systematic reproduction*

Subsection (g) provides that the rights granted by this section extend only to the "isolated and unrelated reproduction of a single copy or phonorecord of the same material on separate occasions." However, this section does not authorize the related or concerted reproduction of

multiple copies or phonorecords of the same material, whether made on one occasion or over a period of time, and whether intended for aggregate use by one individual or for separate use by the individual members of a group.

With respect to material described in subsection (d)—articles or other contributions to periodicals or collections, and small parts of other copyrighted works—subsection (g) (2) provides that the exemptions of section 108 do not apply if the library or archive engages in "systematic reproduction or distribution of single or multiple copies or phonorecords." This provision in S.22 provoked a storm of controversy, centering around the extent to which the restrictions on "systematic" activities would prevent the continuation and development of interlibrary networks and other arrangements involving the exchange of photocopies. After thorough consideration, the Committee amended section 108 (g) (2) to add the following proviso:

*Provided*, that nothing in this clause prevents a library or archives from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.

In addition, the Committee added a new subsection (i) to section 108, requiring the Register of Copyrights, five years from the effective date of the new Act and at five-year intervals thereafter, to report to Congress upon "the extent to which this section has achieved the intended statutory balancing of the rights of creators, and the needs of users," and to make appropriate legislative or other recommendations. As noted in connection with section 107, the Committee also amended section 504(c) in a way that would insulate librarians from unwarranted liability for copyright infringement; this amendment is discussed below.

The key phrases in the Committee's amendment of section 108(g) (2) are "aggregate quantities" and "substitute for a subscription to or purchase of" a work. To be implemented effectively in practice, these provisions will require the development and implementation of more-or-less specific guidelines establishing criteria to govern various situations.

The National Commission on New Technological Uses of Copyrighted Works (CONTU) offered to provide good offices in helping to develop these guidelines. This offer was accepted and, although the final text of guidelines has not yet been achieved, the Committee has reason to hope that, within the next month, some agreement can be reached on an initial set of guidelines covering practices under section 108(g) (2).





## f. House Report: Discussion of Works Excluded

The House Report's discussion of section 108(h) is longer than the corresponding paragraph in the Senate Report, and reflects certain amendments in the subsection.

### *Works excluded*

Subsection (h) provides that the rights of reproduction and distribution under this section do not apply to a musical work, a pictorial, graphic or sculptural work, or a motion picture or other audiovisual work other than "an audiovisual work dealing with news." The latter term is intended as the equivalent in meaning of the phrase "audiovisual news program" in section 108 (f) (3). The exclusions under subsection (h) do not apply to archival reproduction under subsection (b), to replacement of damaged or lost copies or phonorecords under subsection (c), or to "pictorial or graphic works published as illustrations, diagrams, or similar adjuncts to works of which copies are reproduced or distributed in accordance with subsections (d) and (e)."

Although subsection (h) generally removes musical, graphic, and audiovisual works from the specific exemptions of section 108, it is important to recognize that the doctrine of fair use under section 107 remains fully applicable to the photocopying or other reproduction of such works. In the case of music, for example, it would be fair use for a scholar doing musicological research to have a library supply a copy of a portion of a score or to reproduce portions of a phonorecord of a work. Nothing in section 108 impairs the applicability of the fair use doctrine to a wide variety of situations involving photocopying or other reproduction by a library of copyrighted material in its collections, where the user requests the reproduction for legitimate scholarly or research purposes.

## 4. Excerpts From Conference Report

The following excerpt is reprinted from the Report of the Conference Committee on the new copyright law (H.R. Rep. No. 94-1733, pages 70-74).

### a. Conference Report: Introductory Discussion of Section 108

#### REPRODUCTION BY LIBRARIES AND ARCHIVES

##### *Senate bill*

Section 108 of the Senate bill dealt with a variety of situations involving photocopying and other forms of reproduction by libraries and archives. It specified the

conditions under which single copies of copyrighted material can be noncommercially reproduced and distributed, but made clear that the privileges of a library or archives under the section do not apply where the reproduction or distribution is of multiple copies or is "systematic." Under subsection (f), the section was not to be construed as limiting the reproduction and distribution, by a library or archive meeting the basic criteria of the section, of a limited number of copies and excerpts of an audiovisual news program.

##### *House bill*

The House bill amended section 108 to make clear that, in cases involving interlibrary arrangements for the exchange of photocopies, the activity would not be considered "systematic" as long as the library or archives receiving the reproductions for distribution does not do so in such aggregate quantities as to substitute for a subscription to or purchase of the work. A new subsection (i) directed the Register of Copyrights, by the end of 1982 and at five-year intervals thereafter, to report on the practical success of the section in balancing the various interests, and to make recommendations for any needed changes. With respect to audiovisual news programs, the House bill limited the scope of the distribution privilege confirmed by section 108 (f) (3) to cases where the distribution takes the form of a loan.

### b. Conference Report: Conference Committee Discussion of CONTU Guidelines on Photocopying and Interlibrary Arrangements

#### *Conference substitute*

The conference substitute adopts the provisions of section 108 as amended by the House bill. In doing so, the conferees have noted two letters dated September 22, 1976, sent respectively to John L. McClellan, Chairman of the Senate Judiciary Subcommittee on Patents, Trademarks, and Copyrights, and to Robert W. Kasstenmeier, Chairman of the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice. The letters, from the Chairman of the National Commission on New Technological Uses of Copyrighted Works (CONTU), Stanley H. Fuld, transmitted a document consisting of "guidelines interpreting the provision in subsection 108 (g) (2) of S. 22, as approved by the House Committee on the Judiciary." Chairman Fuld's letters explain that, following lengthy consultations with the parties concerned, the Commission adopted these guidelines as fair and workable and with the hope that the conferees on S. 22 may find that they merit inclusion in the conference report. The letters add that, although time did not permit securing signatures of the representatives of the principal library organizations or of the organizations representing publishers and authors on these





guidelines, the Commission had received oral assurances from these representatives that the guidelines are acceptable to their organizations.

The conference committee understands that the guidelines are not intended as, and cannot be considered, explicit rules or directions governing any and all cases, now or in the future. It is recognized that their purpose is to provide guidance in the most commonly-encountered interlibrary photocopying situations, that they are not intended to be limiting or determinative in themselves or with respect to other situations, and that they deal with an evolving situation that will undoubtedly require their continuous reevaluation and adjustment. With these qualifications, the conference committee agrees that the guidelines are a reasonable interpretation of the proviso of section 108 (g) (2) in the most common situations to which they apply today.

### **c. Conference Report: Reprint of CONTU Guidelines on Photocopying and Interlibrary Arrangements**

The text of the guidelines follows:

#### **PHOTOCOPYING—INTERLIBRARY ARRANGEMENTS**

##### **INTRODUCTION**

Subsection 108 (g) (2) of the bill deals, among other things, with limits on interlibrary arrangements for photocopying. It prohibits systematic photocopying of copyrighted materials but permits interlibrary arrangements "that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work."

The National Commission on New Technological Uses of Copyrighted Works offered its good offices to the House and Senate subcommittees in bringing the interested parties together to see if agreement could be reached on what a realistic definition would be of "such aggregate quantities." The Commission consulted with the parties and suggested the interpretation which follows, on which there has been substantial agreement by the principal library, publisher, and author organizations. The Commission considers the guidelines which follow to be a workable and fair interpretation of the intent of the proviso portion of subsection 108 (g) (2).

These guidelines are intended to provide guidance in the application of section 108 to the most frequently encountered interlibrary case: a library's obtaining from another library, in lieu of interlibrary loan, copies of articles from relatively recent issues of periodicals—those published within five years prior to the date of the request. The guidelines do not specify what aggregate quantity of copies of an article or articles published in a

periodical, the issue date of which is more than five years prior to the date when the request for the copy thereof is made, constitutes a substitute for a subscription to such periodical. The meaning of the proviso to subsection 108 (g) (2) in such case is left to future interpretation.

The point has been made that the present practice on interlibrary loans and use of photocopies in lieu of loans may be supplemented or even largely replaced by a system in which one or more agencies or institutions, public or private, exist for the specific purpose of providing a central source for photocopies. Of course, these guidelines would not apply to such a situation.

#### **GUIDELINES FOR THE PROVISIO OF SUBSECTION 108 (G) (2)**

1. As used in the proviso of subsection 108 (g) (2), the words "... such aggregate quantities as to substitute for a subscription to or purchase of such work" shall mean:

(a) with respect to any given periodical (as opposed to any given issue of a periodical), filled requests of a library or archives (a "requesting entity") within any calendar year for a total of six or more copies of an article or articles published in such periodical within five years prior to the date of the request. These guidelines specifically shall not apply, directly or indirectly, to any request of a requesting entity for a copy or copies of an article or articles published in any issue of a periodical, the publication date of which is more than five years prior to the date when the request is made. These guidelines do not define the meaning, with respect to such a request, of "... such aggregate quantities as to substitute for a subscription to [such periodical]".

(b) With respect to any other material described in subsection 108 (d), (including fiction and poetry), filled requests of a requesting entity within any calendar year for a total of six or more copies or phonorecords of or from any given work (including a collective work) during the entire period when such material shall be protected by copyright.

2. In the event that a requesting entity—

(a) shall have in force or shall have entered an order for a subscription to a periodical, or

(b) has within its collection, or shall have entered an order for, a copy or phonorecord of any other copyrighted work, material from either category of which it desires to obtain by copy from another library or archives (the "supplying entity"), because the material to be copied is not reasonably available for use by the requesting entity itself, then the fulfillment of such request shall be treated as though the requesting entity made such copy from its own collection. A library or archives may request a copy or phonorecord from a





supplying entity only under those circumstances where the requesting entity would have been able, under the other provisions of section 108, to supply such copy from materials in its own collection.

3. No request for a copy or phonorecord of any material to which these guidelines apply may be fulfilled by the supplying entity unless such request is accompanied by a representation by the requesting entity that the request was made in conformity with these guidelines.

4. The requesting entity shall maintain records of all requests made by it for copies or phonorecords of any materials to which these guidelines apply and shall maintain records of the fulfillment of such requests, which records shall be retained until the end of the third complete calendar year after the end of the calendar year in which the respective request shall have been made.

5. As part of the review provided for in subsection 108 (i), these guidelines shall be reviewed not later than five years from the effective date of this bill.

#### **d. Conference Report: Discussion of "Audiovisual News Program"**

The conference committee is aware that an issue has arisen as to the meaning of the phrase "audiovisual news program" in section 108 (f) (3). The conferees believe that, under the provision as adopted in the conference substitute, a library or archives qualifying under section 108 (a) would be free, without regard to the archival activities of the Library of Congress or any other organization, to reproduce, on videotape or any other medium of fixation or reproduction, local, regional, or network newscasts, interviews concerning current news events, and on-the-spot coverage of news events, and to distribute a limited number of reproductions of such a program on a loan basis.

#### **e. Conference Report: Discussion of Libraries and Archives in Profit-Making Institutions**

Another point of interpretation involves the meaning of "indirect commercial advantage," as used in section 108 (a) (1), in the case of libraries or archival collections within industrial, profit-making, or proprietary institutions. As long as the library or archives meets the criteria in section 108 (a) and the other requirements of the section, including the prohibitions against multiple and systematic copying in subsection (g), the conferees consider that the isolated, spontaneous making of single photocopies by a library or archives in a for-profit organization without any commercial motivation, or participation by such a library or archives in interlibrary arrangements, would come within the scope of section 108.

#### **5. Copyright Office Regulations Under Section 108**

The following is the text of regulations adopted by the Copyright Office to implement sections 108 (d) (2) and 108 (e) of the new copyright law (37 *Code of Federal Regulations* § 201.14).

##### **§ 201.14 Warnings of copyright for use by certain libraries and archives.**

(a) *Definitions.* (1) A "Display Warning of Copyright" is a notice under paragraphs (d) (2) and (e) (2) of section 108 of Title 17 of the United States Code as amended by Pub. L. 94-553. As required by those sections the "Display Warning of Copyright" is to be displayed at the place where orders for copies or phonorecords are accepted by certain libraries and archives.

(2) An "Order Warning of Copyright" is a notice under paragraphs (d) (2) and (e) (2) of section 108 of Title 17 of the United States Code as amended by Pub. L. 94-553. As required by those sections the "Order Warning of Copyright" is to be included on printed forms supplied by certain libraries and archives and used by their patrons for ordering copies or phonorecords.

(b) *Contents.* A Display Warning of Copyright and an Order Warning of Copyright shall consist of a verbatim reproduction of the following notice, printed in such size and form and displayed in such manner as to comply with paragraph (c) of this section:

##### **NOTICE**

##### **WARNING CONCERNING COPYRIGHT RESTRICTIONS**

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

(c) *Form and Manner of Use.* (1) A Display Warning of Copyright shall be printed on heavy paper or other durable material in type at least 18 points in size, and shall be displayed prominently, in such manner and location as to be clearly visible, legible, and comprehensible to a casual observer within the immediate vicinity of the place where orders are accepted.

(2) An Order Warning of Copyright shall be printed





within a box located prominently on the order form itself, either on the front side of the form or immediately adjacent to the space calling for the name or signature of the person using the form. The notice shall be printed in type size no smaller than that used predominantly throughout the form, and in no case shall the type size be smaller than 8 points. The notice shall be printed in such manner as to be clearly legible, comprehensible, and readily apparent to a casual reader of the form.

## E. LIABILITY FOR INFRINGEMENT

### 1. Text of Section 504

The following is a reprint of the entire text of section 504 of title 17, *United States Code*. The special provisions affecting librarians and educators are in subsection (c) (2).

#### § 504. Remedies for infringement: Damages and profits.

(a) IN GENERAL.—Except as otherwise provided by this title, an infringer of copyright is liable for either—

(1) The copyright owner's actual damages and any additional profits of the infringer, as provided by subsection (b); or

(2) statutory damages, as provided by subsection (c).

(b) ACTUAL DAMAGES AND PROFITS.—The copyright owner is entitled to recover the actual damages suffered by him or her as a result of the infringement, and any profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages. In establishing the infringer's profits, the copyright owner is required to present proof only of the infringer's gross revenue, and the infringer is required to prove his or her deductible expenses and the elements of profit attributable to factors other than the copyrighted work.

(c) STATUTORY DAMAGES.—

(1) Except as provided by clause (2) of this subsection, the copyright owner may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work, for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally, in a sum of not less than \$250 or more than \$10,000 as the court considers just. For the purposes of this subsection, all the parts of a compilation or derivative work

constitute one work.

(2) In a case where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed willfully, the court in its discretion may increase the award of statutory damages to a sum of not more than \$50,000. In a case where the infringer sustains the burden of proving, and the court finds, that such infringer was not aware and had no reason to believe that his or her acts constituted an infringement of copyright, the court in its discretion may reduce the award of statutory damages to a sum of not less than \$100. The court shall remit statutory damages in any case where an infringer believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under section 107, if the infringer was: (i) an employee or agent of a nonprofit educational institution, library, or archives acting within the scope of his or her employment who, or such institution, library, or archives itself, which infringed by reproducing the work in copies or phonorecords; or (ii) a public broadcasting entity which or a person who, as a regular part of the nonprofit activities of a public broadcasting entity (as defined in subsection (g) of section 118) infringed by performing a published nondramatic literary work or by reproducing a transmission program embodying a performance of such a work.

### 2. Excerpts From House Report on Section 504

The following excerpts are reprinted from the House Report on the new copyright law (H.R. Rep. No. 94-1476, pages 161-163). Material not of immediate interest to librarians and educators has been omitted. Much of the corresponding discussion in the Senate Report (S. Rep. No. 94-473, pages 143-145) is substantially the same: the House Report's discussion of statutory damages applicable to librarians and educators is new.

#### IN GENERAL

A cornerstone of the remedies sections and of the bill as a whole is section 504, the provision dealing with recovery of actual damages, profits, and statutory damages. The two basic aims of this section are reciprocal and correlative: (1) to give the courts specific unambiguous directions concerning monetary awards, thus avoiding the confusion and uncertainty that have marked the present law on the subject, and, at the same time, (2) to provide the courts with reasonable latitude to adjust recovery to the circumstances of the case, thus avoiding some of the artificial or overly technical awards resulting from the language of the existing statute.

Subsection (a) lays the groundwork for the more detailed provisions of the section by establishing the liability of a copyright infringer for either "the copyright





owner's actual damages and any additional profits of the infringer," or statutory damages. Recovery of actual damages and profits under section 504 (b) or of statutory damages under section 504 (c) is alternative and for the copyright owner to elect; as under the present law, the plaintiff in an infringement suit is not obliged to submit proof of damages and profits and may choose to rely on the provision for minimum statutory damages. However, there is nothing in section 504 to prevent a court from taking account of evidence concerning actual damages and profits in making an award of statutory damages within the range set out in subsection (c).

#### *Actual damages and profits*

In allowing the plaintiff to recover "the actual damages suffered by him or her as a result of the infringement," plus any of the infringer's profits "that are attributable to the infringement and are not taken into account in computing the actual damages," section 504 (b) recognizes the different purposes served by awards of damages and profits. Damages are awarded to compensate the copyright owner for losses from the infringement, and profits are awarded to prevent the infringer from unfairly benefiting from a wrongful act.\*\*\*

#### *Statutory damages*

Subsection (c) of section 504 makes clear that the plaintiff's election to recover statutory damages may take place at any time during the trial before the court has rendered its final judgment. The remainder of clause (1) of the subsection represents a statement of the general rates applicable to awards of statutory damages.

Clause (2) of section 504 (c) provides for exceptional cases in which the maximum award of statutory damages could be raised from \$10,000 to \$50,000, and in which the minimum recovery could be reduced from \$250 to \$100. The basic principle underlying this provision is that the courts should be given discretion to increase statutory damages in cases of willful infringement and to lower the minimum where the infringer is innocent. The language of the clause makes clear that in these situations the burden of proving willfulness rests on the copyright owner and that of proving innocence rests on the infringer, and that the court must make a finding of either willfulness or innocence in order to award the exceptional amounts.

The "innocent infringer" provision of section 504 (c) (2) has been the subject of extensive discussion. The exception, which would allow reduction of minimum statutory damages to \$100 where the infringer "was not aware and had no reason to believe that his or her acts constituted an infringement of copyright," is sufficient to protect against unwarranted liability in cases of occasional or isolated innocent infringement, and it offers adequate insulation to users, such as broadcasters and newspaper publishers, who are particularly vulnerable to this type

of infringement suit. On the other hand, by establishing a realistic floor for liability, the provision preserves its intended deterrent effect; and it would not allow an infringer to escape simply because the plaintiff failed to disprove the defendant's claim of innocence.

In addition to the general "innocent infringer" provision clause (2) deals with the special situation of teachers, librarians, archivists, and public broadcasters, and the nonprofit institutions of which they are a part. Section 504 (c) (2) provides that, where such a person or institution infringes copyrighted material in the honest belief that what they were doing constituted fair use, the court is precluded from awarding any statutory damages. It is intended that, in cases involving this provision, the burden of proof with respect to the defendant's good faith should rest on the plaintiff.

### **3. Excerpts From Conference Report on Section 504**

The following excerpts are reprinted from the Report of the Conference Committee on the new copyright law (H.R. Rep. No. 94-1733, pages 79-80).

#### **REMEDIES FOR COPYRIGHT INFRINGEMENT**

##### *Senate bill*

Chapter 5 of the Senate bill dealt with civil and criminal infringement of copyright and the remedies for both. Subsection (c) of section 504 allowed statutory damages within a stated dollar range, and clause (2) of that subsection provided for situations in which the maximum could be exceeded and the minimum lowered; the court was given discretion to reduce or remit statutory damages entirely where a teacher, librarian, or archivist believed that the infringing activity constituted fair use.\*\*\*

##### *House bill*

Section 504 (c) (2) of the House bill required the court to remit statutory damages entirely in cases where a teacher, librarian, archivist, or public broadcaster, or the institution to which they belong, infringed in the honest belief that what they were doing constituted fair use.\*\*\*

##### *Conference substitute*

The conference substitute adopts the House amendments with respect to statutory damages in section 504 (c) (2)\*\*\*





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## F. GUIDELINES FOR OFF-AIR RECORDING OF BROADCAST PROGRAMMING FOR EDUCATIONAL PURPOSES

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The following excerpts are reprinted from the House Report on piracy and counterfeiting amendments (H.R. 97-495, pages 8-9).

In March 1979, Congressman Robert Kastenmeier, Chairman of the House Subcommittee on Courts, Civil Liberties and Administration of Justice, appointed a Negotiating Committee consisting of representatives of educational organizations, copyright proprietors, and creative guilds and unions. The following guidelines reflect the Negotiating Committee's consensus as to the application of "fair use" to the recording, retention, and use of television broadcast programs for educational purposes. They specify periods of retention and use of such off-air recordings in classrooms and similar places devoted to instruction and for homebound instruction. The purpose of establishing these guidelines is to provide standards for both owners and users of copyrighted television programs.

(1) The guidelines were developed to apply only to off-air recording by non-profit educational institutions.

(2) A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable transmission) and retained by a non-profit educational institution for a period not to exceed the first forty-five (45) consecutive calendar days after date of recording. Upon conclusion of such retention period, all off-air recordings must be erased or destroyed immediately. "Broadcast programs" are television programs transmitted by television stations for reception by the general public without charge.

(3) Off-air recordings may be used once by individual teachers in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary, in classrooms and similar places devoted to instruction within a single building, cluster, or campus, as well as in the homes of students receiving formalized home instruction, during the first ten (10) consecutive school days in the forty-five (45) day calendar day retention period. "School days" are school session days—not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions—within the forty-five (45) calendar day retention period.

(4) Off-air recordings may be made only at the request of, and used by, individual teachers, and may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same teacher, regardless of the number of times the program may be broadcast.

(5) A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of

teachers under these guidelines. Each such additional copy shall be subject to all provisions governing the original recording.

(6) After the first ten (10) consecutive school days, off-air recording may be used up to the end of the forty-five (45) calendar day retention period only for teacher evaluation purposes, i.e., to determine whether or not to include the broadcast program in the teaching curriculum, and may not be used in the recording institution for student exhibition or any other non-evaluation purpose without authorization.

(7) Off-air recordings need not be used in their entirety, but the recorded programs may not be altered from their original content. Off-air recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.

(8) All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.

(9) Educational institutions are expected to establish appropriate control procedures to maintain the integrity of these guidelines.













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